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UNITED STATES

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NUCLEAR REGULATORY COMMISSION

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PUBLIC MEETING ON POTENTIAL

5

CHANGES TO NRC HEARING PROCESS

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Commission Hearing Room

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Rockville Pike

9

Rockville, Maryland

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11 The above-entitled meeting commenced, pursuant to notice, at

12

8:40 a.m.

1 P R O C E E D I N G S

2 [8:40 a.m.]

3 CAMERON: I'm glad to see that most people came back. I
4 realize that people have schedules where they might have to
5 leave early or leave at certain times today and before, I'd
6 give you at least a suggestion of where I think we might want
7 to go this morning.

8 We have a new participant with us. Why don't you
9 introduce yourself to us?

10 LASHWAY: Good morning. My name is Dave Lashway. I'm
11 here on behalf of the National Mining Association. Tony
12 Thompson was unable to make it. Katie Sweeney, also from the
13 National Mining Association, is probably going to join us at
14 some point, as well.

15 CAMERON: Thanks a lot, Dave. Yesterday, we spent a lot
16 of time discussing some overall perspectives on the hearing
17 process, as well as the objectives of the hearing process, and
18 I did do a rewrite of the objective, draft objective statement
19 that we were looking at yesterday, and I would suggest that
20 when we start off our discussion this morning, we spend a
21 little time discussing that.

1 And we also began to identify some problems or concerns
2 that people have with the existing hearing process and there's
3 also a handout you have on that.

4 I tried to put them in an order that I thought would be
5 most productive for discussion this morning and we'll go over
6 this when we get to that part of the agenda.

7 And I guess I would suggest that we go first to a
8 discussion of the objective statement and then start going
9 through the problems and when we get to each of those
10 problems, let's just have a full discussion on that in terms
11 of whether people think that it's a problem, what the various
12 facets of the problem are and what some potential solutions
13 are, and we'll work through that way.

14 And in terms of a wrap-up, there may be suggestions for
15 future process suggestions on this rulemaking. For example,
16 Steve Kohn, who can't be here this morning, called and
17 suggested that he thought that before a proposed rule is
18 published, but after it's drafted, that it might be beneficial
19 to get this group back together again to discuss that, and
20 I'll just leave that there for the moment and we can think
21 about whether there's any other process types of suggestions

1 like that for the NRC.

2 MURPHY: Does that presuppose that a proposed rule will
3 be published?

4 CAMERON: No. If there is a proposed rule drafted, that
5 would be a suggestion. And I can assure you that we're going
6 to have a break at 10:00 today, and I won't say anything more
7 than that, but at 10:00, we're going to take a break, and
8 we'll try to finish up around 12:15 today. I just thank all
9 of you for being here.

10 Before we go to the objectives statement, does anybody
11 have anything that they want to add before we get started on
12 objectives in terms of what we're going to do today?

13 ZAMEK: I have a question.

14 CAMERON: Sure. Go ahead.

15 ZAMEK: My question is whether you had input from the
16 Commissioners during the night.

17 CAMERON: At 3:30 this morning. No. On that point, I
18 will ask Joe if he wants to add any -- Joe Gray if he wants to
19 add anything to this.

20 MR. GRAY: Probably not.

21 CAMERON: But probably not. We were joined by some of

1 the legal assistants from the Commission offices yesterday and
2 we are going to raise the issue of concern from yesterday and
3 Tony suggested that, for example, we get a clarification on
4 the SRM. That issue will be raised informally with the
5 Commission.

6 Joe, are you going to --

7 MR. GRAY: With the Commission offices.

8 CAMERON: With the Commission offices.

9 MR. GRAY: It probably will be tomorrow before I can get
10 to them, but there will be a meeting at which I will indicate
11 the concerns and what some of the views are with regard to the
12 SRM and what it seems to portend.

13 CAMERON: And I am going to make, at the break, copies of
14 the SRM. Most of you have it, but also I wanted to make a
15 copy of the voting record that is available, the individual
16 Commission votes, and I'll bring that down after the break.

17 Jill, anything else on that?

18 ZAMEK: I just feel like we're working in the dark in
19 terms of what they're looking for from us. So I was hoping
20 for some clarification on that.

21 CAMERON: I think that the material that is being

1 developed and conversation around the table is going to be,
2 from the indications I've had from the Commission legal
3 assistants, that the information is going to be very helpful
4 for their deliberations.

5 Okay. Let's introduce -- is this Katie?

6 SWEENEY: Yes. I'm sorry, I'm losing my voice.

7 CAMERON: And you haven't even begun the discussion.

8 SWEENEY: That's why Dave had to be here with me. Katie
9 Sweeney, National Mining Association.

10 CAMERON: Thanks, Katie. Let's go to the handout, the
11 redraft, so to speak, of the objective in the NRC hearing
12 process. Just to -- before we discuss it, just to tell you
13 what this means, if it's confusing, is if you look at -- the
14 objective of the NRC hearing process is to provide a fair, and
15 then there is an addition, and meaningful opportunity for
16 interested members of the public.

17 There is a substitution for interested members of the
18 public, substitute any person whose interest may be affected
19 by the proceeding, and that's the language from the statute.

20 And then we go to Ray's and we have an addition there,
21 and effectively pursue well defined issues that are within the

1 scope of review and for the NRC to efficiently, and there is
2 an addition, objectively and independently reach legally and
3 technically supportable, was the original, and there is a
4 substitute there, sound substantive conclusions.

5 For those of you who were here yesterday, I think you
6 recognize the discussion behind all of those particular
7 points.

8 What isn't reflected here is we did have a discussion on
9 what's the purpose of the hearing process. Resolve disputes
10 was suggested, educate the public, inform the staff, and we
11 also had some discussions around public confidence, public
12 acceptance, and also public perception.

13 So let's go to the first phrase, to provide a fair and
14 meaningful, et cetera, et cetera, opportunity. Does anybody
15 have any comments on that? Bob?

16 BACKUS: First of all --

17 CAMERON: And speak into the mic, Bob, for everybody in
18 the back.

19 BACKUS: We all get trained on this. I do think there
20 could be confusion between objective and purpose and I --
21 before we even get to the first phrase, I would rather

1 describe this as just saying the NRC hearing process should,
2 because I think we did discuss purposes and these are really
3 not the purposes.

4 The purposes were dispute resolution and, at least for
5 some of us, additional purposes, such as meaningful public
6 participation and so forth.

7 So I would not want to ever use this, think that we have
8 defined this as the purpose, and I think there could be
9 confusion when you say objective as being the same as purpose.

10 CAMERON: Well, you can get wrapped up in the
11 ambiguities, the differences between objectives, purposes,
12 outcomes.

13 Anybody have any problem with Bob's suggestion? Ellen?

14 GINSBERG: This is just a suggestion, but I was thinking
15 that one of the things we talked about yesterday and there
16 seemed to be some agreement around the table is that a very
17 important aspect of this is to reach a sound, legally sound
18 and technically sound decision, and I wonder, if we flipped
19 it, if it might be clearer by saying that the NRC hearing
20 process should, and I'm not providing the exact words, but the
21 concept would be should generate a sound record on which a

1 legally and technically sound decision can be made through
2 providing a fair and yada yada yada.

3 That sort of change in emphasis.

4 CAMERON: And yada yada yada, that's --

5 GINSBERG: That's the first part of that.

6 CAMERON: I'm sorry. I just was checking on the spelling
7 of that. Let me just check in and see if anybody has any
8 problems with Bob's suggestion, which is to get out of the
9 definitional quagmire by just saying the NRC hearing process
10 should.

11 Okay. Now, Ellen, your suggestion is to start off
12 basically with the generating the record, so that -- in other
13 words, take the last phrase about efficiently, objectively,
14 independently arriving at a sound decision and start off with
15 that.

16 GINSBERG: Yes. Whatever words we use, and I'm not
17 necessarily wedded to these as opposed to some of the other
18 words we bandied about yesterday, but to provide the initial
19 concept as being that this is to get to the right decision, to
20 use Tony's words.

21 I think that if you start off that way and then you say -

1 - and you're going to provide the first part, which is a fair
2 and meaningful opportunity for interested persons to
3 participate, I think that that might really more crisply cover
4 the purpose.

5 CAMERON: Fine. Anybody have any problem with
6 essentially putting that, reorienting the emphasis here?
7 Tony?

8 ROISMAN: Only in this sense. I think that the first
9 part of that phrase, which is fine if it's at the end of the
10 statement, shouldn't be at the beginning of the statement, the
11 NRC to efficiently or, for that matter, objectively and
12 independently. I think that emphasizes the wrong thing.

13 If I understand Ellen's suggestion, she wants to start,
14 and I don't have any problem with that, with the idea of
15 getting to the right result is the first important thing.

16 So I would put, if we go with Bob's idea, the purpose of
17 the NRC -- or the hearing -- the NRC hearing process should
18 reach legally and technically -- I'm not sure whether sound is
19 the right word, but whatever it is, something other than
20 supportable, substantive decisions and then I assume the
21 connecting phrase is "by" and then go to the other clauses.

1 But I would put the efficiently, objectively and
2 independently somewhere in the body of those next two clauses,
3 not as the lead-off after the purpose is.

4 CAMERON: Ellen?

5 GINSBERG: Tony, yes, I agree with that. That was my
6 intent, to get to the right answer as the first emphasis,
7 first part of the emphasis.

8 The other thing is, we talked yesterday and I think you
9 may have come up with this language, I wrote it down, somebody
10 -- or Joe Gray may have said this, to generate a sound record
11 on which a legally and technically sound, or whatever word we
12 choose to use, decision can be made.

13 I think there's a benefit in including that, because what
14 that talks about is sort of a broader part of the process.

15 But I throw that out for consideration, to talk about
16 generating a sound record.

17 CAMERON: Okay. Go ahead, Tony.

18 ROISMAN: I'm sorry. All I wanted to say is I don't know
19 how much time you want to spend on playing with words. I
20 don't like this word sound, because --

21 CAMERON: I think that's an important word probably to

1 talk about. We'll spend a little bit of time on that.

2 ROISMAN: I just want us to blow past that.

3 CAMERON: And I just want to make sure that I understand,
4 before we go to Larry's, what Ellen's point was.

5 Is there something that needs to be added in here or is
6 it in here already?

7 GINSBERG: All I was suggesting is the concept of
8 generating a record is not in the current paper in front of us
9 and yesterday it was made, I think Joe made the suggestion and
10 I was just posing it as a possible additional concept to be
11 included in this.

12 CAMERON: Generating a certain type of record. Do you
13 want to put some modifiers on that? Is that what I heard you
14 say, too?

15 GINSBERG: I think I'll just make this comment and then
16 we can go by it. The idea was to generate a record on which a
17 technically and legally sound decision could be made, and I
18 thought that covered a lot of interests.

19 CAMERON: Okay. Great.

20 GINSBERG: That's why I was suggesting it.

21 CAMERON: All right. I got that. Larry?

1 CHANDLER: My variation on the theme is sort of what
2 started the preamble, taking some of Bob's thoughts into mind,
3 start off by saying in order to develop an adequate record
4 upon which a legally and technically sound decision can be
5 reached, the NRC hearing process should provide, and then go
6 through the other, start off with that, capture, I think, some
7 of what Ellen was just discussing.

8 CAMERON: Do you want to repeat that? Ellen looks --

9 GINSBERG: Puzzled.

10 CAMERON: -- like she didn't --

11 CHANDLER: I would start off the whole concept by saying
12 in order to develop an adequate record upon which a legally
13 and technically sound decision can be reached, be made, the
14 NRC hearing process should, then you capture the remaining
15 words, provide a fair, and et cetera, et cetera.

16 CAMERON: Jeff is reaching for his card.

17 LUBBERS: Just a phrase. How about legally and
18 scientifically correct decisions?

19 CAMERON: Tony, does that help you in terms of the sound?

20 ROISMAN: Yes. That's better, I think that's a lot
21 better than sound. It doesn't leave any ambiguity about what

1 this is supposed to be.

2 CHANDLER: I'm sorry. Which word?

3 CAMERON: Legally and scientifically correct.

4 CHANDLER: I'm not sure scientifically could work.

5 CAMERON: Speak into the mic, please, Larry.

6 CHANDLER: I just thought scientifically -- we talked
7 about good science yesterday and technical could have a --
8 scientists and the engineers tend to --

9 CAMERON: Right. Is that indeed -- we're on the science
10 versus engineering question here, a Paul points out.

11 CHANDLER: There are lots of folks who wouldn't
12 necessarily consider themselves to be scientists.

13 CAMERON: And that technical is a better word.

14 CHANDLER: Technical I tend to think of in a broader way.

15 CAMERON: Let me just check in with Tony here.

16 Substituting the word correct for sound.

17 ROISMAN: I think I would agree with that.

18 CAMERON: Better?

19 ROISMAN: But I'm not sure I agree with Larry's -- I
20 think technical -- it's different than scientific and I agree
21 there is this dispute between scientists and engineers, but it

1 seems to me that, if necessary, if that really is -- if there
2 is some history to it, that maybe both phrases should be
3 there, because if it's technically correct and scientifically
4 wrong, it wouldn't be the decision the Commission wants to
5 reach, and, conversely, if it's scientifically correct and
6 technically wrong, it wouldn't be what the Commission wants to
7 reach either.

8 So if there really is some substantive difference between
9 those two words, then I think maybe they both have to be
10 there.

11 CAMERON: Let's go to Larry, and speak into the mic,
12 Larry, and then we'll go to Ellen.

13 CHANDLER: The distinction I'm trying to create, and we
14 could be spending more time than needed on this, but the
15 distinction I'm trying to recognize is there are many issues
16 which are not what I would think of as scientific issues.

17 In the license transfer area, for example, there are
18 numerous issues related to corporate relationships, control
19 over corporate entities, which tend to be more of an economic
20 or business nature, that I wouldn't necessarily consider to be
21 scientific issues.

1 They may be issues of foreign control, which I wouldn't
2 consider to be scientific issues. So the term I'm looking
3 for, and I don't know if technical is the better one, is
4 something that would -- it captures the substantive.

5 Now, maybe the word -- substituting the word substantive
6 for technically, just say legally and substantively, and my
7 preference would be the word sound decision.

8 CAMERON: So I'll do a reprise on this in a minute on
9 what these variations are. Let's hear from Ellen, and then
10 Susan, and then see where we are. Ellen?

11 GINSBERG: Thanks. With respect to sound versus correct,
12 I have a nagging concern about correct, because correct
13 implies or at least I infer, when you hear the word correct,
14 that there is only one answer and when you have a plaintiff
15 and you have a defendant in any civil case, my guess is that
16 the losing party views it as an incorrect decision.

17 And I really worry about, in this context, using the word
18 correct as opposed to sound or supportable. And, again, I'm
19 not wedded to either of those words, but something that
20 captures the concept that there are certain issues where we
21 may not agree on correctness of the decision.

1 I don't know, I don't have at my fingertips a word to
2 substitute for it that might satisfy everybody, but I do want
3 to express a concern about the word correct.

4 CAMERON: Okay. Thank you. Susan?

5 HIATT: I want to address some of what I think are
6 appropriate qualifiers for generating a blank record. You
7 might fill in that blank with a full record, a complete
8 record, and a balanced record.

9 CAMERON: So you would have full and balanced as a
10 substitute for adequate or --

11 HIATT: Yes. I would prefer substituting that for
12 adequate.

13 CAMERON: Let me just try to sum this up for people.
14 Again, I think it's worthwhile to try to work on this, but I
15 don't think that we need to kill ourselves over it either.

16 I think we have three issues up here. We started out
17 with supportable. We've gone to sound. Is sound better than
18 correct? Is there another word to use there? Second issue,
19 this technically, scientifically, versus substantive, the use
20 of the word substantive, which covers -- which would cover any
21 of the types of issues in any hearing that could come up, I

1 think is Larry's point.

2 And Susan's point that it should be a full and balanced
3 record, as opposed to an adequate record.

4 Tony, did you want to say something now? Then we'll go
5 to Jay.

6 ROISMAN; I think Ellen's point put her finger on an
7 important issue, if you will, and probably, I mean, the real
8 answer to this would be a -- if we came up with something like
9 this, what would happen to it.

10 If the Commissioners adopted it and put it into the
11 preamble to something or whatever, what language would be used
12 by general counsel in that statement to describe what it
13 means.

14 Ellen and I, I think, have a somewhat different view of
15 what we think the role of those words, correct versus sound,
16 are supposed to mean.

17 My idea is that what it's supposed to mean is that the
18 Commission has, as its goal, getting correct answers and that
19 there are correct answers and the fact that there is a losing
20 party doesn't mean that just because they still believe they
21 were correct, their answer is correct.

1 Ellen's point is to emphasize the process part of it,
2 which is that we're trying to have a process which will
3 produce, among possibly correct answers, the one that the
4 Commission has chosen that will stand up legally in court and
5 stand up in other ways.

6 I think that's a not insignificant difference. I really
7 intended yesterday, when I suggested that we not use
8 supportable, but we go to some other word, that the purpose of
9 this part of the phrase would be a statement by the
10 Commission, assuming it eventually got to that point, of a
11 policy that this agency has as its goal, getting correct
12 decisions, whether the word is correct or whatever word you
13 want to use for it, not that it has as its goal providing a
14 fair forum for people to have a fight and when the game is
15 over, they'll declare a winner and the losers will go home and
16 say we'll play again next week.

17 That's a different thing. So I think Ellen and I are
18 talking about something slightly different as to what the
19 purpose of this phrase is.

20 CAMERON: Let's check in with Ellen on that. What do you
21 think about what Tony just said?

1 GINSBERG: I don't think I disagree with you that we are
2 looking for the best decision that you can reach given the
3 record in front of you. We are looking for protection of the
4 public health and safety. That is every -- what I heard
5 yesterday and what I think still stands is that that is
6 everybody's goal.

7 The question is when you say correct, is there only one
8 correct decision, and I guess I have my doubts about many of
9 these decisions having only one correct answer.

10 I am very concerned, not can you add one and one and come
11 up with two, yes, that is quantifiable, you can come up with a
12 very specific and correct answer there. There are a whole
13 host of issues that may not lend themselves to that kind of
14 quantifiable or specific response.

15 I think correct is misleading in terms of the objective.

16 The other thing is, yesterday, there was a comment made
17 about or several comments made about zero risk. The court has
18 already talked about zero risk. We can't impose now, unless
19 the Commission decides to go in this direction, a zero risk
20 standard where the court has said that's not what adequate
21 protection means. That's not the definition in the Atomic

1 Energy Act and in the NRC regulations.

2 I think that plays into this. I just wanted to make that
3 point, because I didn't have a chance to do it yesterday.

4 CAMERON: Let's hear from Alan before we go over to Jay.

5 I don't think that Tony was suggesting that the word sound or
6 the word correct would mean zero risk, but I'll --

7 ROISMAN: That's correct.

8 CAMERON: All right. Alan?

9 HEIFETZ: I found Larry's formulation to be one that was
10 very understandable to me and clear. I'm concerned about this
11 word correct because I don't think it falls within my
12 understanding of what scientific method is.

13 There isn't any correct scientific method. There's a
14 theory that is acceptable and it stays acceptable until you
15 can demonstrate that it's no longer acceptable, but there may
16 be a paradigm shift. So I don't know any scientist that would
17 say you could come to a correct decision and I would hesitate
18 to have to make any decision on the record and say that it is
19 the correct decision.

20 As Ellen points out, half the people who read my
21 decisions think I'm a genius and the other half think I'm an

1 idiot. So be it.

2 The only other question I had is I understand Susan's
3 concern about the record, but I'm not sure I understand what I
4 would consider to be a, quote, balanced record. Again, that
5 seems to be -- which balance may be in the eyes of the
6 beholder, but as somebody who is presiding over a proceeding,
7 I'm not sure I could satisfy myself that something is
8 necessarily balanced or should be balanced.

9 Sometimes the weight of evidence is tremendously on one
10 side or the other. That's not a balanced record, but I can
11 reach a correct result as long as it's an adequate record; in
12 other words, there is enough evidence in there for me
13 reasonably to reach a decision.

14 CAMERON: But not necessarily a correct result.

15 HEIFETZ: Not necessarily a correct result, but go on the
16 theory that seldom wrong, but never in doubt.

17 CAMERON: Right. Is that on the NRC flag? Mal?

18 MURPHY: I personally don't -- I mean, I don't read the
19 word correct as being limited to one decision. I think -- I
20 mean, I sort of prefer, like Tony, prefer the use of the word
21 correct versus sound for the reasons I think he expressed,

1 that that ought to be the goal of any agency such as the NRC,
2 the goal of their adjudicative processes ought to be to reach
3 correct decisions.

4 And in lots of cases, there are more than one correct
5 decision, but the goal ought to be, to phrase it differently,
6 I think, the goal ought to be to avoid incorrect or wrong
7 decisions. And I don't know how long we need to beat these
8 two words, but I prefer the use of the word correct, as Tony
9 does, and I don't read that to be limited, to limit the NRC to
10 one single decision in any given licensing proceeding.

11 CAMERON: I think you can understand, I guess, the point
12 that Alan and Alan have made.

13 MURPHY: Sure.

14 CAMERON: In the use of that term. Let's take two more
15 comments on this and this will all be grist for the mill for
16 the Office of General Counsel. Susan, did you want to respond
17 to Alan's point about full and balanced?

18 HIATT: Yes. I wanted to clarify, where I was getting at
19 with the idea of balance is that what is typically done in
20 practice is when you have a poorly funded intervenor, the
21 record is not balanced, is decidedly unbalanced on one side,

1 where the weight of the dollars is on behalf of staff and the
2 applicant.

3 I guess what I was getting at is could you try to,
4 perhaps through intervenor funding or some other means, inject
5 more fairness into the process so that you don't have this
6 one-sided record that will inevitably lead to one conclusion.

7 CAMERON: So perhaps the concern there might more fully
8 addressed by what fair includes, and that's your concern.

9 HIATT: Right. And I think maybe having full and
10 complete, maybe that's a better term than balanced, but that's
11 what I was getting at, is frequently when you have such a vast
12 disparity of resources brought to the proceeding by the
13 parties, is you don't have a balance, you don't have a full
14 and complete record, that would have been there had there been
15 a level playing field among the parties.

16 CAMERON: We're going to get to that substantive issue
17 today. Let's go to George, Jay, and the rest of you, and
18 finish this up. George?

19 EDGAR: I'd favor, if we're going to draw some
20 distinction between a process-based purpose or objective and a
21 result-based objective, I really have trouble with the notion

1 that the adjudicatory process is one that creates precise
2 results.

3 It never has. It's always been a way of approximating an
4 answer. We have a system where we'll generate a record, we
5 will have a set of standards for a decision, which are really
6 not precise standards, reasonable assurance, adequate safety,
7 and in the end, a court is going to look at this record and
8 say was it supported by substantial evidence.

9 I think we're trying to impose and freight too much in
10 the process by a statement that would use a term like correct.
11 I think it's a little too absolute and it doesn't reflect the
12 realities of the existing process.

13 CAMERON: Thank you. And you're weighing in on obviously
14 the side of not using the term correct.

15 EDGAR: Look at how this process has been invented. Why
16 are you trying to rewrite the standard?

17 CAMERON: I think -- and Tony, correct me if I'm wrong on
18 this, but your point is that the decision should be one that
19 fulfills the Commission's mandate to protect public health and
20 safety, because.

21 ROISMAN: Right.

1 CAMERON: I mean, that's the underlying concern.

2 ROISMAN: That's right. To say correct doesn't mean a
3 correct or the correct. It just means correct. That's number
4 one.

5 Number two, it doesn't attempt to change the standard.
6 If it's adequate for the Commission to license a plant, if
7 there is reasonable assurance, then all this mean is that its
8 decision that there is reasonable assurance is correct and not
9 -- so there is no intent to use the phrase to try to bootstrap
10 some new standard, but to simply say what the standard is, the
11 Commission's decision on that standard, they should have -- I
12 mean, it almost, it seems to me, that it's a little surprising
13 anybody would argue with it, although I'm often surprised that
14 people argue with positions that I take.

15 This one seems to be more worthy of being embraced than
16 most. It's that they want to make correct decisions and sound
17 is just kind of -- I don't know -- it's just kind of mealy-
18 mouth word. Correct is pretty clear. It means, yeah, we are
19 right.

20 Now, some court might tell them, no, you're wrong, and
21 events might prove them wrong, but the goal is we want to have

1 a correct decision and to take away any suggestion that the
2 decision is okay as long as we had a good process and the fact
3 that it's correct or not doesn't matter would be really a bad
4 thing.

5 CAMERON: Mike, you, I think, wanted to amplify on what
6 Tony just said, right?

7 MCGARRY: I do. I think Tony's comments have clarified a
8 statement I was going to make before, because it seemed like,
9 as George pointed out, we're moving into a direction of maybe
10 creating a new standard for judicial review. But as Ellen
11 said, we all want the right decision.

12 So if this statement somehow is going to work its way
13 into a statement of considerations, if there is a rule, I
14 wouldn't object to the word correct as long as it is defined
15 as you have laid it out, Tony.

16 I think George's position should be recognized in a
17 statement of considerations that the Commission is not about
18 establishing a new standard for judicial review, that this
19 test of substantial evidence is to support the decision, but
20 it is the objective of the Commission to reach the correct and
21 right decision in this context.

1 CAMERON: Okay. We're just going to take the cards that
2 are up and then we're going to move on. Let's go -- is it
3 going to be Dave or is it Katie? Dave, all right.

4 LASHWAY: Not beating a dead horse, but there is a lot of
5 baggage, I think we would agree with you on that point, but
6 there is a lot of baggage with the word sound. At PA, for
7 example, sound science is being debated thoroughly in the GMO
8 context and let's be sure that if we don't want to amend or
9 alter the judicial standard here, sound science may not be the
10 term we want to choose.

11 CAMERON: Thank you. That's useful for us to look at.

12 Jim, and then let's go to Larry for last comment. Jim?

13 RICCIO: After listening to Ellen, I understand why the
14 industry wants to move towards risk-based regulation. There
15 is a standard and the standard should be met. We had a
16 deterministic standard for regulation within the industry, and
17 I just wanted to point out the irony that we're 45 years into
18 the process and we're deciding what constitutes a legitimate
19 hearing.

20 This reminds me of the meeting we had a couple weeks ago
21 where the agency and the industry are sitting around trying to

1 determine what is the design basis. You guys are 45 years
2 into the process. You figure you'd have it down by now.

3 I also get the feeling that I'm sitting around writing
4 the statement of considerations for a rule which I oppose, and
5 I fail to see how re-working this language is going to make it
6 any more palatable to me that you're going to remove my rights
7 to cross examination and discovery.

8 And I base that upon the SRM, I also base it upon the
9 vote sheets that came down from the different Commissioners,
10 and while I think it's beneficial to banter around words of
11 legalese, I think it's more important that we address what's
12 on the table. And hopefully we can get there before I've got
13 to leave.

14 CAMERON: And that's where we're going, although I think
15 that people might disagree with some of your
16 characterizations.

17 RICCIO: I'm sure they will.

18 CAMERON: But I don't think that we're -- the intent here
19 is not to be drafting the statement of consideration. The
20 relatively, I think, simple idea was expressed by Ellen
21 yesterday that we need some sort of a -- and as the NRC

1 pointed out in a paper, that there needs to be some foundation
2 for what comes out of this revision and that it would be
3 useful to refer back to certain objectives in trying to do
4 that.

5 Larry, you want to wrap this up? Then we're going to go
6 into the first problem we identified yesterday.

7 CHANDLER: I'll try to be real brief. Susan had
8 suggested the addition of the word complete into the process
9 and I have a concern about that, and especially with that word
10 in the context of some comments that Tony then made.

11 The completeness of the -- the hearing process is just
12 that. It is a process. It provides a forum by which the
13 participants have an opportunity to raise issues and have
14 those issues adjudicated. We talked about that yesterday and
15 I think George had raised a concern about what the objective
16 is; is it dispute resolution or something else.

17 The completeness of the record is a function of what the
18 parties offer, but also it's something that may be controlled
19 by the tribunal, by the presiding officer, by the board,
20 whoever is presiding in a given case.

21 In other words, a party may have what it believes to be

1 more evidence to offer and that evidence may be excluded by
2 the tribunal because it may be cumulative or for lots of
3 reasons.

4 So the term completeness could imply some subjective
5 notion that I don't think the Commission may want to subscribe
6 to. It certainly needs to be an adequate record, it needs to
7 be a substantial record, in order to support a decision that's
8 made.

9 I was a proponent of the word sound, I still believe it's
10 a good one in the context, but I'm concerned about introducing
11 a notion that we're changing -- as I said yesterday, changing
12 standards here when we describe what really is a process by
13 which substantive decisions get made.

14 CAMERON: Thank you, Larry. What I'd like to do now is
15 to move on to our list of issues and we had a lot of
16 discussion of these issues yesterday, including some proposed
17 solutions.

18 What I'd like to do is to move through these issue by
19 issue, and including whether you agree that there is a
20 problem, what are the aspects of the problem, what are some
21 potential solutions.

1 I put the generic issue on first. We had a lot of
2 discussion of that yesterday and the feeling was while people
3 understand perhaps that there is a long tradition of trying to
4 address issues through generic means rather than case specific
5 means, but there have been some circumstances where there
6 seems to be perception, an element of unfairness associated
7 with using generic mechanisms to take issues off the table.

8 And if we could put a finder point on what circumstances
9 people think are inappropriate for that use, then I think that
10 would be very, very helpful.

11 I'm going to start with Jeff Lubbers on this one and then
12 go to the rest of the folk. Go ahead, Jeff.

13 LUBBERS: If I could make a generic point about this. I
14 think that it's usually beneficial for agencies to make policy
15 through rulemaking, if they can, and I think one of the
16 problems with the administrative process now is that
17 rulemaking itself has become more difficult.

18 But we have many situations where agencies want to sort
19 of settle issues that come up in a case by case context. OSHA
20 has been trying to do an ergonomics rule for years and it's
21 kind of been thwarted by Congressional appropriations, riders,

1 and things like that.

2 The National Labor Relations Board, which decides cases
3 case by case has been urged repeatedly to do more rulemaking
4 rather than just wait for cases to come up.

5 So I think as a general matter, deciding issues through
6 generic means -- and really, I don't know what we're talking
7 about except rulemaking there -- is a good thing.

8 Tony Roisman raised a few issues with respect to how this
9 is done that I just want to comment on. I think that it can
10 be a problem if an agency that does a lot of adjudicatory
11 policy-making starts -- decides that, well, here is an issue
12 that's coming up frequently, let's try to do a rule on it.
13 Meanwhile, there are cases in the pipeline where the issue is
14 coming up.

15 I think there, and we talked about this in one of our
16 studies at the Administrative Conference relating to the NLRB,
17 we just said that the NLRB should continue to decide those
18 cases based on prior precedent while they're doing the
19 rulemaking.

20 If it's an issue of first impression, and this is what I
21 gathered Tony's main concern was, where some issue has come up

1 in a licensing proceeding and the intervenors are sort of
2 making hay with this and all of a sudden the Commission
3 decides, well, let's take it out of the licensing proceeding
4 and treat it as a rulemaking issue and not allow it to be
5 brought up in the licensing proceeding, that might be a
6 problem.

7 I think that isolated issue needs to be addressed and I'm
8 not sure I have a good answer for that yet.

9 But with respect to NRC rulemaking in general, we haven't
10 talked about the NRC's rulemaking process. I know you have a
11 few rules on that. I don't want to add a new issue here.

12 CAMERON: Thank you.

13 LUBBERS: But I just want to throw out a few things
14 there. You do have a petition for rulemaking process in your
15 rules that citizens can take advantage of and the agency has
16 to respond to petitions for rulemaking. Intervenor funding
17 might be something that could be thought of in the rulemaking
18 context, as well.

19 The internet obviously gives people or gives the agency
20 an opportunity to get more public participation in rulemaking.
21 Then there is negotiated rulemaking, which I know that the NRC

1 has had to do -- has been required to do, in some instances,
2 where it hasn't worked that well, but I think if you're
3 talking about an issue that is going to recur and that there's
4 a lot of interest in the intervenor community about or the
5 industry, and/or the industry, I think it might be wise to try
6 to do a negotiated rulemaking on one of these issues.

7 So I think there are some things that the NRC could think
8 about doing in improving the rulemaking process, but I think
9 the real only problem I see is the specific problem of
10 plucking an issue out of a -- a first impression out of a
11 licensing case and saying, oh, we're not going to handle that
12 in licensing, we're only going to handle that in rulemaking.

13 CAMERON: Thanks for those suggestions. You mentioned a
14 couple of things that I think might sort of zero in on in this
15 problem. One is the timing issue, the timing of when the
16 generic resolution is done, and, also, perhaps the type of
17 issue. I don't know if there's anything associated -- there
18 are certain types of issues.

19 You mentioned this novel new type of thing. I don't know
20 if that -- if there's a type of issue criterion that might be
21 used here and I think Jill is going to give us some examples,

1 perhaps.

2 But just as a point of clarification, we have done two
3 negotiated rulemakings. One of them was required, on
4 radiopharmaceuticals, but the other one was the one that Mal
5 Murphy mentioned yesterday that came up with some new rules
6 for the high level waste proceeding on this hearing process
7 issue.

8 Jill?

9 ZAMEK: Some of the issues that have been labeled generic
10 really have some site-specific exceptions. Diablo is one that
11 I work on and when we came -- we did a license recapture, is
12 what we did, and we weren't allowed to talk about the waste,
13 but the -- it's sitting on an earthquake fault, for one thing,
14 and the pools are going to be filled by the year 2006 and they
15 gave them the license till the year 2023 and 25.

16 It seemed like we should be able to speak to what's going
17 to happen to this waste and the earthquake fault and all that
18 kind of stuff. It's not generic when it's site-specific.

19 CAMERON: But do you -- I guess the question would be, do
20 you feel that you can't raise the issues that you want to
21 raise effectively by commenting on the proposed generic

1 solution to a particular issue that might apply on a site-
2 specific basis.

3 ZAMEK: One of the problems is the time, talk about
4 delay. This hearing was, you know, I don't know, five years
5 ago and I never got to speak up about this and I doubt that I
6 ever will. And there's no resolution. The same thing
7 happened with the Thermolag stuff. You're only allowed to
8 talk about that in a small context and it doesn't get resolved
9 for many, many years and we don't have any input in that.

10 CAMERON: We're going to go to Larry now. Larry, besides
11 -- in addition to the point you were making, if you have
12 anything to offer in terms of what Jill just said, please do
13 so.

14 CHANDLER: Actually, I was not going to make a point as
15 much as ask for clarification and I think it was of Jill, who
16 had made reference, and you've captured it in the words
17 generic EIS.

18 I just don't understand what the context was in which
19 those words were used yesterday, because I can understand
20 having issues foreclosed, perhaps, because of generic
21 resolution or treatment in a rule and we discussed very

1 briefly yesterday the fact that they can be challenged in
2 certain circumstances.

3 But simply the existence of a generic environmental
4 statement, I'm not sure why that would have foreclosed
5 consideration of an issue, unless that's somehow captured in a
6 rule.

7 CAMERON: Now, Jim, it may be -- I'm not sure if Jill was
8 the one who mentioned that yesterday, but Jim had an example.

9 RICCIO: I think I may have raised it yesterday.
10 Basically, if you look at license renewal, the industry has
11 mentioned there are at least 22 plants that have now moved
12 forward and said they want to do license renewal.

13 Many of the generic issues that touch upon license
14 renewal were foreclosed long before the public had any idea
15 which of these plants were going to be renewed. So there is
16 no reason for the public to get involved, because they didn't
17 know whether or not there was an eminent threat of the reactor
18 being relicensed.

19 So just by basically foreclosing issues early in the
20 process, prior to the public even having notification --

21 LUBBERS: What sort of issue?

1 CHANDLER: Let me help. When the license renewal
2 rulemaking was undertaken, our Part 51, which are
3 environmental rules, dealt with environmental issues
4 associated with renewal through a generic process. But this
5 is not just simply a freestanding generic environmental impact
6 statement. There was a rulemaking associated with it.

7 There were -- I forget what the total number was, 88, 90,
8 some issues that were identified as being pertinent to
9 renewal, environmental issues.

10 Of those, some 60 were determined to be and were captured
11 in the rule as being generically determined, cannot be raised.
12 Some others were question marks and others were left open for
13 case by case resolution.

14 So there was specific treatment in the rule. It's not,
15 as I say, just a freestanding environmental statement, but, in
16 fact, the way in which the rule itself is written.

17 LUBBERS: Was the rule challenged in court?>

18 CHANDLER: No, not on this aspect. No.

19 RICCIO: Not the second rewrite of it.

20 CAMERON: All right. Let's -- thanks for that
21 clarification. I mean, the conclusion of the environmental

1 statement is, I think, what Larry is saying were
2 institutionalized in a rulemaking.

3 CHANDLER: A rulemaking in which there was notice and
4 comment.

5 RICCIO: Of course, there was notice and comment, but the
6 point is if the public has no idea that it's going to affect
7 their interests, why are they going to participate? It's a
8 way to foreclose public involvement at an early stage.

9 CAMERON: Can I put -- and we're going to go to Ellen,
10 but maybe to sort of get to the essence of your comment, Jim,
11 and perhaps it's sort of what Jill was talking about, it's
12 that when an issue is being dealt with on a site-specific
13 basis, the people in that community have notice that something
14 is going on, whereas if things are being dealt with in a
15 generic manner and the famous publication in the Federal
16 Register issue, et cetera, et cetera, that people may not have
17 the notice that they ordinarily would have in order to resolve
18 things.

19 I know that from the -- from Jeff's point of view, they
20 probably have things to say about that. But, Ellen, you want
21 to comment about the license renewal issue. Go ahead.

1 GINSBERG: I think it's important to recognize that in
2 the course of developing the generic environmental impact
3 statement, the NRC left open, you've got these category one
4 and category two issues.

5 CAMERON: I participated in the process.

6 GINSBERG: Right. So the NRC -- well, perhaps for other
7 people's edification. The NRC left open the prospect of if
8 you could -- and I think the standard is new and significant
9 information, that you could open up an issue that had been
10 generically determined, but admittedly it was intended to be a
11 reasonably high standard because this was generally determined
12 through a rulemaking, et cetera, et cetera.

13 CAMERON: Thanks, Ellen. Tony, what do you have to say
14 about all of this?

15 ROISMAN: Well, I think a couple of things. One, since
16 it's not this group of Commissioners, although it may be some
17 of the staff, I can talk openly about GESMO, because it's a
18 good example for Jeff to understand what this problem is.

19 The Commission was proceeding ahead with certain kinds of
20 individualized licensing decisions and the issue got raised as
21 to whether or not there were environmental impacts associated

1 with the use of plutonium as a fuel in nuclear reactors, and
2 the most significant of those or the hottest one was did it
3 make a terrorist risk much more palatable by creating
4 something that terrorists could interfere with.

5 And we could certainly argue that there's a lot of site-
6 specific things that are involved in that. If the site that
7 you're going to have all the plutonium at and moved from and
8 the site that it's going to be moved to are all in very remote
9 areas, where it's relatively easy to do surveillance and watch
10 out and protect, you have one set of risks, and if it's moving
11 along the eastern seaboard, you have a different set of risks.

12 For whatever reasons, the Commission made the decision
13 that that issue should be dealt with generically. And let's
14 assume for the moment that that was a sound decision and a
15 correct decision, and that there was nothing wrong with that
16 decision.

17 But what the Commission did was it said we're going to
18 take that issue away from individual licensing proceedings and
19 we're going to move it into a generic context and while we are
20 deciding it, the individual licensing proceedings will
21 continue and if they reach a conclusion before we're done,

1 tough.

2 That history makes people very nervous about the
3 Commission using the generic process as a device to evade
4 facing of questions. They did the same thing on what's called
5 the S3 rule, which deals with the nuclear waste disposal.

6 The Commission didn't, doesn't and, as far as I know, has
7 no intent to ever honestly answer the question does it make
8 any sense to allow new nuclear waste to be generated when we
9 do not have in place a solution to the problem of disposing of
10 it.

11 What they said in the S3 rule, which is the still rule
12 that applies in every case, is because we will have to have a
13 solution, we are going to assume we will have a solution.

14 Now, with all due respect, I just think that's garbage
15 and it's political garbage. It's not even substantive
16 garbage. But that's what they have done.

17 So there is this history of people being concerned that
18 the Commission is deliberately playing games with this generic
19 rulemaking process as a way of taking all the hard issues away
20 from individual licensing proceedings and keeping the train
21 running on time.

1 Having said that, and I don't know that there is a
2 solution for that if you can't convince a court, we did in
3 GESMO, we did not in S3, that what the Commission did was
4 wrong and that may be the only remedy to that. But there is
5 at least the second part of it, which I think you addressed
6 and I think it raised some important points.

7 That is, should there be some kind of restriction on the
8 use of generic rulemaking as a device for taking issues out of
9 individual licensing proceedings when the issue had already
10 started in the individual licensing proceeding and the generic
11 rulemaking comes after the fact.

12 So as the Commission always wants to do when it sets new
13 safety standards, it ought to be considered, if not adopted as
14 a rule, that if you're going to do generic rulemaking, you
15 grandfather every case in which the issue has already been
16 raised and let that go to conclusion in the individual case.

17 If the generic rulemaking is completed before that case
18 is completed, then you might put in place a process by which
19 you blend the generic rulemaking with the individual action,
20 but there ought to be -- I think Larry mentioned there is a
21 fairly high standard for interfering with the decision made in

1 the generic rulemaking in an individual case, if you meet a
2 high standard.

3 I would say if you've got a case that's already ongoing
4 and a generic rulemaking concludes, the high standard is
5 automatically deemed met and the licensing board considers
6 equally the resolution of the matter in the generic process,
7 informed by whatever additional evidence got developed in the
8 individual case.

9 At least if you grandfather, I think it takes care of
10 some of the concern that the process is being used to avoid
11 the tough questions.

12 Ultimately, on some of them, the Commission can follow
13 what I think would be a procedurally acceptable approach and
14 then it's just a matter of a legal dispute that you have to
15 take to court; could they legally take this issue away from
16 individual cases that are decided in this way.

17 That's what I think is kind of the history of it.

18 CAMERON: Thank you, Tony. It does -- you have put one
19 suggestion for how to deal with perhaps what people view as
20 the most egregious use of this mechanism.

21 I really want to make sure that we start on another issue

1 before 10:00. So what I would suggest is we take the cards
2 that are up and if the people who do have their cards up, I'd
3 like to hear some comment, and particularly from Larry and Joe
4 perhaps, on Tony's suggestion on the feasibility of that, if
5 you want to say anything.

6 Let's go to Jay, and then Bob, and then over to George.
7 Jay?

8 SILBERG: First, on Jim's point that putting issues into
9 the generic hopper, somehow this affects individuals because
10 they don't know that their particular neighborhood plant will
11 be affected, I think would cut the legs out from under the
12 whole generic process.

13 By definition, any issue that's going to be dealt with on
14 a nationwide basis generically is going to affect everyone and
15 if somehow we exclude people whose neighborhoods or
16 neighborhood plant or neighborhood licensed activity is not
17 yet known to be in the group that's going to be affected, you
18 do weigh what the whole possibility of generic solutions.

19 If we have a situation, if we have a scheme which allows
20 for generic treatment, by definition, some people will not
21 know that it will apply to them, because generic solutions

1 tend to last for long periods of time. There may be people
2 yet unborn, there may be nuclear plants or activities yet
3 unborn who will be affected by generic solutions, and if you
4 adopt the view that somehow you can't apply those generic
5 solutions in individual cases because those individuals didn't
6 know that they were going to be directly affected, you might
7 as well get rid of generic solutions completely.

8 I think you can make the same comment about national
9 legislation. Any national legislation that establishes
10 standards that are going to govern everyone is subject to the
11 same argument and either we have nationwide or generic
12 solutions or we don't, and I think the benefits of having them
13 far outweigh the detriments.

14 There are going to be people on both sides who may not
15 know they're affected. There may be people who will be
16 applicants who don't know they're applicants at the time a
17 generic rule is adopted, and they're just as harmed, if you
18 will, as the citizens who don't know that their local licensed
19 activity is going to be affected.

20 In terms of Tony's comment on grandfathering individual
21 cases where an issue is raised, I think the law is pretty

1 clear on that and I think it goes back as far as Ecology
2 Action, 2nd Circuit decision in 1972, in the NRC arena.

3 I think there is a lot of case history on retroactive
4 legislation. I think there's a lot of case history on
5 retroactive rulemaking. The idea that you would be
6 grandfathered, I think, again, cuts the legs out of generic
7 rulemaking.

8 I'm not sure how Tony would react if an individual case
9 were grandfathered and it turned out that the resolution in
10 that case were significantly more beneficial to the applicant
11 than the generic solution. I doubt Tony would let the
12 applicant get away with having, if you will, a less
13 restrictive rule applied to it because it happened to prevail
14 that way in a site-specific case, and it can't be a one-way
15 street.

16 If a generic determination is safe, meets the reasonable
17 assurance standard or meets the NEPA standard, then that ought
18 to be good enough for everybody, whether it was started in the
19 generic proceeding or not, and there are lots of reasons why
20 you start -- issues come up in generic proceedings that may
21 be, as it was in the case of some of the spent fuel storage

1 casks, that the generic licensing had not yet been completed,
2 the utility had to get on with the process.

3 They started a site-specific process. The rule was
4 eventually issued and they converted from the site-specific to
5 the general; perfectly reasonable use of a regulation.

6 To say that you can't move from one category to another
7 seems to turn the licensing process upside down, if you will,
8 and I think it will significantly reduce the utility of
9 rulemaking in general and generic solutions in particular.

10 CAMERON: Thanks, Jay. I'm sorry that -- I'm going to
11 take these cards that are up and then we're going to move on
12 to the next topic.

13 SILBERG: Let me just add one more on the S3. I don't
14 know GESMO as well as S3, but the Commission, I think it's not
15 quite accurate to say that the Commission took the issue out
16 of individual hearings and didn't resolve it. They did an
17 interim rule in 1976 when the issue first was given generic
18 treatment. Then they did a final rule.

19 In taking the long-term issue off the table, the waste
20 confidence rule that wasn't a political decision, there was a
21 very long intensive rulemaking, with massive submittals by all

1 parties, including lots of intervenor participation, and
2 decisions were made. You may disagree with those decisions.
3 We disagree with a lot of decisions the Commission makes in
4 rulemaking.

5 But there was a rule, there was a process, and nobody
6 challenged the result in court. If people are unhappy, there
7 is a forum to go to and there are lots of reasons why people
8 choose not to appeal various decisions in court.

9 But that is where it ought to be fought and I think to
10 say now that the decision was garbage, when those who now say
11 it was garbage chose not to appeal it, I think, is after the
12 fact and sour grapes.

13 CAMERON: Thank you. I guess let's go to Bob and then
14 George and then finish off on this. I'm sorry that I need to
15 do that.

16 RICCIO: I'm not going to let -- the generic process that
17 you talk about with the dry casks now has given us basically
18 exploding casks on the shores of Lake Michigan. So if that's
19 a proper process and it is a good outcome, you have hydrogen
20 bursts occurring in dry casks that came out of that generic
21 process.

1 So if that's a proper process and it reaches a sound
2 conclusion, I think we're all in trouble.

3 CAMERON: Let's go to Bob. Bob Backus.

4 BACKUS: I think the logic for generic treatment of
5 certain issues is unassailable. Nuclear waste in Diablo is
6 the same as nuclear waste in Seabrook and so forth and generic
7 treatment of that, though we may not like it, it's awfully
8 hard to argue against it.

9 But this whole discussion shows that we need -- when
10 we're talking about hearing process, we cannot exclude the
11 generic process, because to the extent we acknowledge the
12 right to go to treat these issues generically, we have to look
13 at what is the process by which these issues get treated
14 generically.

15 And I would say if the intervenors think they have a hard
16 time in the adjudicatory process, and we do, the mountain is
17 twice as high in the generic process and the rulemaking
18 process.

19 I think the GAO did a study of rulemaking petitions and I
20 don't think any non-industry group has ever had a rulemaking
21 petition even acted on. I may be wrong, you'll tell me if I'm

1 wrong.

2 I know the State of Maine at one time tried to initiate a
3 rulemaking to expand the emergency zone beyond the ten miles.
4 It never got anywhere. So there's a real sense of disparity
5 there and I would say if you want general acceptance, that
6 issues like nuclear waste are going to be moved off to be
7 handled generically, the Commission would have to go beyond
8 merely intervenor funding.

9 I think they would have to, as they do with licensing
10 proceedings, the mountain would have to come to Mohammed.
11 They have to go around the country. If there are not
12 intervenors, I think they should find them and create them to
13 deal with that.

14 So that there cannot be a legitimate claim, as Jay says,
15 it's just tough luck if you didn't know about it. I think the
16 Commission has got to go beyond just the notice in the Federal
17 Register. I mean, who reads the Federal Register for fun? It
18 doesn't have any pictures in it, for gosh sakes. And create
19 an extraordinary -- I think you have to go beyond the
20 ordinary, because after all, this is a unique agency, it's
21 dealing with a unique technology, with unique risks.

1 And if they want to have, as the industry clearly does,
2 many of these issues handled generically, you've got to go the
3 extra mile or three miles to create a process -- or nine miles
4 -- 26 miles, we'll make it a marathon -- and create a process
5 that really seeks out the intervention on this.

6 CAMERON: Thanks, Bob. I think that that point is noted
7 and the Commission is trying to go that extra mile in the
8 rulemaking area, too, and certainly there can be improvements
9 to that. But I think that the underlying philosophy that
10 we're talking about for hearing process also applies to other
11 types of regulatory interactions.

12 Final point to George.

13 EDGAR: I would really -- I have a real problem with the
14 notion that the agency's hands should be tied, their
15 discretion should be constrained in terms of their ability to
16 take issues from individual cases and put them in a generic
17 process.

18 That's precisely why the agency has that discretion. The
19 Supreme Court has upheld that discretion. The classic case is
20 ECCS. You have it being raised in nine individual cases. You
21 consolidate it, you put it into one proceeding, and you

1 resolve it.

2 If there is a timing issue, if you will, and if there is
3 some hardship engendered by that, that's what the waiver
4 doctrine is for. That's codified in NRC's regulations.

5 If, for some reason, the rule wouldn't serve the purpose
6 for which it was adopted, then one can seek relief under the
7 waiver doctrine.

8 There is no need to build new structure to accommodate
9 that timing issue. It's in place.

10 CAMERON: Okay. Thanks, George. Before we take a break,
11 I at least want to start on a major issue and it is the third
12 issue down, which is proceedings. We heard yesterday
13 proceedings can be overly long and complicated, ascribed to at
14 least one -- one underlying cause is that the boards do not
15 exercise the control necessary over the case in terms of cross
16 examination.

17 I think Jay used the term endless, pointless cross
18 examination, discovery, many other things were pointed out
19 yesterday.

20 Alan was nice enough to talk about the fast formal
21 process that can be used, looking at case management. He

1 talked about the management of complex litigation, that Paul
2 teaches a course on.

3 Let's start on this issue. I guess that in deference to
4 a guest, I would just ask if Alan has anything to say in
5 addition to what he said yesterday on this particular issue.

6 HEIFETZ: I think the only thing that I would suggest is
7 if there are particular problems that you have with the
8 process, those need to be articulated so that they can be
9 addressed. What I tried to do yesterday was just give you a
10 brief idea of how you can go from one type of proceeding to
11 another, collapse timeframes, engage in case management
12 techniques, but I don't come away from the workshop so far
13 understanding exactly what it is about the NRC process that
14 makes things so slow.

15 If I had more of an idea of what you were talking about
16 that stretched something out to a number of years, I could
17 respond to any questions that you have and any suggested
18 solutions. But I can't do it without knowing exactly what is
19 taking so long and I'm here to respond to anything that you
20 have, but I don't have generic suggestions at this point.

21 CAMERON: Thanks, Alan. I think that's sort of a perfect

1 introduction to this session. I would just call everybody's
2 attention again to Tony Roisman's suggestion yesterday that
3 particularly on this particular problem, is that there needs
4 to be a more in-depth, careful evaluation of actual cases to
5 identify what problems have resulted and why.

6 Some of the problems that we heard raised yesterday, we
7 heard sort of a conflicting story about why that particular
8 problem resulted, and perhaps this evaluation might help in
9 that regard.

10 But in response to what Alan -- the question he put to
11 the group, does anybody have anything to say on that? Joe?

12 GRAY: I guess I would just reiterate your question.
13 Twenty years ago and up through the mid '90s, there were
14 various examples of protracted proceedings.

15 More recently, to some extent, at the Commission's
16 urging, the presiding officers, licensing boards, have
17 utilized many techniques to control proceedings.

18 I guess my question is what is the more -- what are the
19 views on the more recent history with a lot of these
20 techniques being used. Is the thought that there's still
21 unnecessary delay and protracted proceedings, despite these

1 controls? And if so, what additional control techniques would
2 people suggest that might address the problem.

3 CAMERON: Thanks for that articulation from the NRC
4 infrastructure, so to speak, of what Alan was asking.
5 Responses to Joe and Alan on this one? Let's go to Edgar, and
6 then over to Dave.

7 EDGAR: I think the recent history is positive, the
8 policy statement, direction the Commission has given, the way
9 it's been carried out by licensing boards, but most
10 significantly, the continuing Commission oversight, the
11 intrusive role of the Commission in managing or at least
12 overseeing the process is crucial.

13 I would suggest that the mechanisms for control of the
14 hearing process are well understood within the Commission and
15 by the licensing boards. Judge, you asked a question, what's
16 different about the NRC, is there something different, and the
17 answer is yes.

18 As distinct from other agency proceedings, the degree of
19 polarization in an NRC proceeding amongst the parties is
20 generally higher than in most decision-making proceedings.

21 It tends to be a yes/no. That's not true in all cases.

1 There are many cases in which we've participated in which the
2 parties aren't that far apart. There are ways for cooperation
3 or for people to adopt a common mission of getting through the
4 proceeding.

5 But it's only fair to recognize that there is a high
6 degree of polarization. I don't know whether you sensed it
7 from some of the debate here.

8 That's not to say that's good or bad. That's the
9 reality. I mean, that's what it is and it doesn't tend to
10 create a process where you're going to get a predictable
11 managed result.

12 CAMERON: I guess that's the -- what are the implications
13 of polarization in terms of the need for more effective case
14 management, is the question. Does that lead to more abuses or
15 even, not terming it abuses, does that lead to more delay, et
16 cetera, et cetera? Just a question to think about.

17 Dave, let's go to you and then over to Tony.

18 LASHWAY: Obviously, our experience lies primarily in the
19 materials licensee context and I'm sure Tony Thompson, as he
20 indicated to me last night, commented yesterday on the less
21 risk involved with materials licensees.

1 But certainly the informal process that I've been a part
2 of on behalf of various licensees, including Hydro Resources,
3 has been a very interesting one from an administrative law
4 context, in that while we certainly, as licensees, are happy
5 about engaging in an informal process, an iterative process,
6 and we welcome Commission oversight readily, the process, at
7 least in the HRI context, as well as in the international
8 uranium context and I can also say in the ATWS context, has
9 been one that has been drawn out and has indeed lacked
10 structure.

11 The kind of a chart we put together the other day
12 reflecting the HRI process shows that more than 70 briefs were
13 filed over the course of a year in the HRI proceeding.
14 Unlimited reply briefs were filed by the intervenors. Every
15 decision of the presiding officer, both procedural and
16 substantive, were appealed to the Commission and, in fact,
17 were subsequently appealed to the DC Circuit Court of Appeals.

18 We now, in the HRI proceeding, for example, have two
19 cases pending in the DC Circuit. The DC Circuit recently
20 issued an opinion dismissing one of the cases and has
21 requested the intervenors to show cause why they shouldn't be

1 sanctioned for abusing the process.

2 This type of proceeding certainly does not fulfill the
3 goals that we have kind of outlined or you have roughly
4 sketched and we discussed earlier, nor any of the goals in the
5 policy statements.

6 So as a licensee, it's difficult for us to move forward
7 and have faith in the process, that we can come to the agency,
8 receive a license and move forward, and give the process
9 that's due and then move on, and that has resulted in some
10 concern not only from HRI, from IUC and ATWS, but all uranium
11 licensees and the recovery industry generally.

12 CAMERON: David, let me ask you a question at this point.
13 What would your solution be to some of those -- I'll just use
14 the term excesses at this point. Perhaps they were things
15 that were a matter of right for the -- afforded to someone.

16 How would you fix that? Are some of these fixable
17 through case management? Does the Commission need to change
18 its rules in subpart (1)? What's your solution?

19 LASHWAY: I think it's a difficult one and I think it
20 involves a variety of different factors.

21 One factor that we have encountered is that under the

1 rules now, for example, a potential party can seek to
2 intervene both pre and post-licensing. That has raised some
3 difficulties for some of the licensees.

4 Unlimited reply, for example, the rules allow parties to
5 request for replies. And in our case, the presiding officer
6 was very willing to open up the record and allow all parties
7 unlimited reply.

8 So it is difficult to come up with some sort of generic
9 rule or generic recommendation. I think it would be wise to
10 look at a case by case basis and certainly, when you do so,
11 please do not skip the uranium recovery industry, because I
12 think some of the issues that we have confronted in our
13 hearings can certainly be useful and enlightening in the
14 broader context.

15 We also have had to deal with this generic decision-
16 making issue with respect to not only the generic
17 environmental impact statement that exists with respect to the
18 uranium recovery industry and mill tailings, but also in the
19 context of performance-based licensing.

20 The intervenors, for example, in the HRI proceeding have
21 attempted to challenge directly the performance-based

1 licensing approach by the agency in the agency proceeding, as
2 well as now at the DC Circuit. That has raised a whole slew
3 of issues, many of which we've begun to talk about here, but I
4 certainly recommend that you take a look at these cases and I
5 think it will become readily apparent after reading some of
6 these decisions and the briefs of the parties, what the major
7 issues are.

8 CAMERON: And I guess that based on what you said, that
9 there's still some -- there's a question of what could the
10 Commission -- what direction, in addition to the policy
11 statement, could the Commission give to the licensing boards
12 to exercise in their discretion to prevent or to mitigate some
13 of the things that you're talking about?

14 We still haven't heard anything on that. Tony, do you
15 want to go ahead?

16 ROISMAN: If I heard that correctly, he seemed to be
17 saying what, at least in part, what I was saying, which is we
18 ought to study this, because nobody knows whether there's a
19 problem.

20 CAMERON: You think that just reaffirms the need for study.

21 ROISMAN: I think it would be a huge mistake to make

1 policy on the basis of anecdote. And with regard to the
2 underlying premise of the uranium recovery people that they're
3 are low risk, low consequences category, I would say the
4 magnitude of resistance that you're getting to your licensing
5 would suggest that you're wrong about that.

6 Somebody out there must think that you're either a high
7 risk or a high probability problem or else you wouldn't have
8 that kind of opposition to what you're doing.

9 So there's something going on. I mean, it's like a --
10 you know, when the canaries start dying in the coal mine, you
11 begin to think there may be gas down there. In this case,
12 you've got a number of people showing up with concerns.

13 But third, I think you seem to be suggesting that in the
14 informal hearing process, which I gather is what you've had,
15 that a licensing board chairman has felt that that process
16 requires him to be more lenient in terms of how he exercises
17 his discretion, which he has an enormous amount of, about
18 allowing reply briefs or allowing additional briefing and so
19 forth and so on.

20 And that seems to me to be a tradeoff that your industry
21 can make a choice about. If you want the tougher rules, and,

1 believe me, they are tougher when you're in the adjudicatory
2 hearing, come to the adjudicatory hearing process. The
3 hearing board chairmen that I'm familiar with use their
4 authority under 2.718 to really crack down, and you didn't get
5 to file reply briefs automatically and there were much tighter
6 time limits.

7 So it's kind of a tradeoff between the processes there
8 that I think -- but I think that your -- whatever your
9 experience has been, it's worth studying to find out where
10 does the problem lie. It doesn't sound like there's an
11 automatic answer. I assume your solution would not be
12 automatically preclude all reply briefs. You might be the
13 side wanting to file one once. And it can't be automatically
14 punish everyone who files a reply brief and then loses the
15 issue.

16 So in the end, it's going to depend upon Paul and his
17 lawyers.

18 CAMERON: Time for the break.

19 [Recess.]

20 CAMERON: Just a couple of points, one from Judge
21 Heifetz, who had to go. Okay. He made the point to me that

1 the fact that there are delays, et cetera, et cetera, with the
2 "informal process" indicates to him that perhaps going to so-
3 called informal is not a panacea for particular problems. He
4 wanted me to put that on the record.

5 I did put Dave on the spot a little bit about, well, what
6 contributes to these problems, what fixes would you come up
7 with. I just wanted to say, in that regard, it goes back to
8 Tony's point about doing an evaluation of these cases. I
9 think that the staff heard about three cases and I'm sure it's
10 not news to them, but three cases that might be put on the
11 list, ATLAS, HRI, International Uranium, put on the list to
12 take a look at, among others, to see what problems do those
13 evidence here; is indeed there a problem and how do you fix
14 that.

15 So we keep coming back to Tony's suggestion.

16 Larry, why don't we go -- you wanted to ask a question
17 and then we'll go to Jill. Go ahead.

18 CHANDLER: I did. And by the way, I guess we heard about
19 some other cases, I think people had mentioned LES, people
20 mentioned Vogtle, if we want to put those all into the pot for
21 consideration.

1 But really a point of clarification, because we've been
2 dancing around an issue. We're here discussing whether
3 changes to our rules of practice, part two, in a very broad
4 sense, are appropriate. Jim has very clearly expressed his
5 reading of the SRM. To perhaps a lesser extent, others have,
6 as well, that it's sort of a preordained outcome to the
7 process, with the single objective.

8 But from -- if I could sort of, for our purposes, as we
9 go through this, if I could put maybe Ellen, Jay, Mike McGarry
10 conveniently left, George is here, and Dave on the spot, from
11 an industry perspective, am I hearing the concerns focusing
12 more on the type of process -- that is, a formal versus an
13 informal process, with a preference towards the formal because
14 it may be more manageable, or is it more literally a case
15 management issue? That is to say, irrespective of the
16 process, it boils down to case management concerns, for which
17 the parties, as well as, perhaps in some instances, the
18 presiding tribunal may have some responsibility.

19 CAMERON: I think that's within this agenda item that
20 we're on. So let's start with George and go to Ellen, Katie,
21 Dave, Jay.

1 CHANDLER: I'd start with Jay.

2 CAMERON: We'll start with George.

3 EDGAR: Larry, my answer to you would be it's both. It's
4 there are case management issues, but as I've previously
5 indicated, I think the Commission oversight policy statement,
6 the way the boards have adopted some of those suggestions,
7 have been encouraging, but there are some process issues that
8 you need to examine now.

9 I think there are some changes that you need to codify
10 now to build some permanence into that process. There are
11 elements of these proceedings that don't require and should
12 not require formal process. I would particularly urge
13 consideration of whether there should be any presumption on
14 cross examination, particularly on technical issues.

15 Certain types of cases should preserve that option, but
16 for the most part, that is not something that I would
17 establish presumption of having.

18 I think much of the discovery can be shortened and
19 controlled, if nothing else, through leveraging technology. I
20 think Mal Walker explained some of the things that have been
21 done in the waste area, but there is a great deal that can be

1 done there.

2 I simply fail to see the need to continue with a trial
3 type process for licensing proceedings. I think there's a set
4 of things that need to be looked at. I've gone through most
5 of them yesterday, but the short answer to your question is
6 it's both implementation and it is structure of the process.
7 You should look at both.

8 CAMERON: Thanks, George. What we're going to do, we're
9 going to go to the rest of the people for their answers to
10 Larry's question. Then I want to give the rest of the panel
11 an opportunity to respond to what they heard. Ellen?

12 GINSBERG: Like George, I strongly believe it's both. I
13 think there are significant improvements that can be made in
14 the current process if greater case management was
15 implemented, but I also think there are aspects of the current
16 process that could be improved significantly.

17 One of the issues that we are dealing with is the view
18 that -- or one of the views we're dealing with is that to
19 reach the technically and legally supportable, sound, correct
20 decision, it's not clear. In fact, we think trial type
21 adjudication is not necessary.

1 Maybe there are some features of it that should be
2 retained. I believe that a lot more can be done on the paper,
3 allowing full participation on the paper. I think there are
4 opportunities to get the views of the parties, all of the
5 parties, out on the table, but that the trial type trapping or
6 the typical things that we think of as a more formal process
7 aren't necessarily helpful to reaching that ultimately right,
8 correct, sound conclusion.

9 CAMERON: Katie?

10 SWEENEY: We're not advocating the elimination of subpart
11 (1). It has worked smoothly for industry in quite a few
12 cases. I think in the cases that we wrote down that have been
13 a problem, better case management would help resolve quite a
14 few of the issues there.

15 LASHWAY: I might just add, I think it's both. Again, I
16 think we're in agreement on that. But clearly subpart (1) has
17 been a terrific process for a variety of some of the materials
18 licensees.

19 But case management clearly has been the problem and I
20 think the tools are in the regulations now, as George pointed
21 out. For example, the Commission oversight and their ability

1 to intervene suasante. The ability of a presiding officer to
2 bring in a technical expert, like they did in the HRI
3 proceeding, proved very useful with respect to ground water.
4 I think Judge Bloch knows more than he ever wanted to about
5 the West Water Canyon member aquifer in northern New Mexico,
6 10,000 pages filed on that issue.

7 So I think the tools are there and I just -- you know, I
8 recommend that they be used.

9 CAMERON: Ellen wants to add one thing. Go ahead.

10 GINSBERG: Small lapse. I just wanted to mention that
11 we've been talking about not just problems, but potential
12 solutions, and one of the potential solutions that I wanted to
13 identify is that the NRC has already implemented subpart (m)
14 and from my perspective, from the industry's perspective, that
15 provides a good model in which some of the concepts that we've
16 talked about here might be -- or a way that the concepts might
17 be used, broadened.

18 CAMERON: I guess the big question is when you would
19 apply those subpart -- the question is when -- we've heard a
20 lot of suggestions about changes, but when would -- what types
21 of proceedings, when should they apply, but we'll get to that.

1 I'm going to go to Jay and then we're going to go over to
2 Tony and Jill and --

3 RICCIO: I'd like to go, so I can get out of here.

4 CAMERON: Okay.

5 RICCIO: Thanks, Larry. I'm not sure the NEI is going to
6 feel the same way when I get my hands on them. I just wanted
7 to say I asked this question yesterday to the industry.

8 Would be still willing to give away your rights to cross
9 examination and discovery if your clients are being asked to
10 take the hit, and I've yet to hear a response out of the
11 industry and I expect and I'll say that the answer is probably
12 no.

13 GINSBERG: Let me speak for myself here. The industry,
14 if there was a proposal to either eliminate or largely
15 restrict cross examination, I believe that the industry would
16 agree to that.

17 ROISMAN: In enforcement proceedings?

18 GINSBERG: I think enforcement proceedings need to be
19 characterized differently.

20 RICCIO: Because it's your rights that would be getting
21 circumscribed.

1 GINSBERG: No. I think there are a lot of individual
2 rights that are at issue in enforcement proceedings and they
3 are not necessarily the utility's.

4 RICCIO: The last point I wanted to make --

5 CAMERON: Tony? Tony, we won't let your comment go
6 unsaid, but let's just try to keep it a little bit organized.

7 RICCIO: The last comment I wanted to make, you actually
8 raised the question in the original agenda as to whether it
9 was appropriate to circumscribe the public's rights in the
10 review of Yucca Mountain.

11 CAMERON: I don't -- just for the record, it wasn't
12 phrased like that.

13 RICCIO: No, it wasn't phrased like that, but that's the
14 gist of it. Other alternative means of having a hearing.
15 Check out footnote seven, you've already promised the public a
16 formal hearing. We're going to hold you to that promise,
17 although apparently the industry's memory is lapsing again as
18 to the promises that were cut back in the '80s.

19 It was a pleasure discussing these issues with you all
20 and I'm sure we'll see you around campus.

21 CAMERON: Okay. Jim, thank you for being here on the

1 high level waste licensing proceeding issue that was flagged
2 in the agenda.

3 Mal Murphy had some words to say on that when he comes
4 back, and I'm sorry that he is not here now to sort of follow-
5 up on what you said.

6 RICCIO: It's in footnote seven, on the SECY paper that
7 was on the web site. I don't believe it's in the packet.

8 CAMERON: Yes, okay. I understand what you're saying
9 about the SECY paper. All right. Jay?

10 SILBERG: I think it's both. I've had a lot of
11 experience in the past two years with case management, as I
12 think it ought to be applied, and, Judge Bollwerk, if you'll
13 cover your ears so you won't blush, but --

14 BOLLWERK: I've been thinking about leaving this for a
15 while.

16 CAMERON: We have a booth in the back of the room that
17 you can listen.

18 SILBERG: We have had problems in that proceeding.
19 Frankly, they've been with the staff review in terms of
20 getting through an expeditious and effective process so far,
21 and we've yet to go to hearing. So I don't want to give the

1 judge my perpetual blessings, but I think he has run the case
2 as it should have been run. I think he has put tough time
3 restrictions on all parties.

4 I think he has limited discovery on all parties. He has
5 imposed the Rule 26, open discovery process, where we have
6 basically opened up a public document room and supposedly the
7 state has done the same.

8 I think the process so far has worked well. I think
9 there still are many areas in which cross examination is not
10 the best engine to get to a scientifically correct, sound,
11 technically supportable, et cetera, decision.

12 I've been in a lot of hearings in the past where the same
13 witness who was discredited in three prior proceedings was
14 allowed to step on the witness stand and put forth his
15 credentials and his statements and the board was willing to
16 let it in for what it's worth, even though we tried to strike
17 the testimony in advance, and he let it in for what it was
18 worth and it was worth nothing.

19 I think there are a lot of improvements that need to be
20 made. I think there are lots of areas where cross examination
21 -- the winner in cross examination is the best lawyer and not

1 the soundest witness, and I think if a case where Tony is on
2 the other side will have a very different result than a case
3 where lawyer X is on the other side, because Tony is, frankly,
4 more skilled than lawyer X.

5 And I'm not sure that that's the way technical decisions
6 are best made. I think we really need to take a hard look at
7 that.

8 CAMERON: Thanks, Jay. Your last comment does get us to
9 an issue that we're going to discuss shortly, which is the
10 issue of making sure that the public litigant has the best
11 preparation for these particular -- it's the whole resource
12 issue. There's a number of those raised.

13 And I guess that we would want to add the phrase to
14 Bollwerk to our lexicon to mean to manage a case effectively.

15 BOLLWERK: Set me up for a fall.

16 CAMERON: Larry, do you have a quick clarification before
17 we go to Tony?

18 CHANDLER: Yes. Having asked the question earlier, Jay,
19 I understand the concerns that you've raised. In some cases,
20 it's staff review; in some cases, it's inadequacy of the
21 application that's submitted by the applicant, which underlies

1 issues; in some cases, case management types of concerns.

2 Is there a preference that you see for a formal process
3 with appropriate case management or informal process which
4 doesn't have some of these ingrained at all?

5 SILBERG: If I could be assured that I would get a Judge
6 Bollwerk in all cases, I might be willing to take --

7 CHANDLER: I can assure you, you will not.

8 BOLLWERK: I can't do them all. That's right.

9 SILBERG: That's one of our problems that we worry. I
10 might be willing to take what I would view as the
11 disadvantages of a formal process, but since I can't guarantee
12 a Judge Bollwerk in all cases, that's one of the reasons why I
13 think you need to codify a lot of these procedures and move in
14 the direction of less formal approaches in many cases.

15 CAMERON: We still keep talking in sort of generalities
16 here, use less formal approaches in many cases. Maybe we can
17 put a finer point on what people believe on that.

18 But as sort of a question for Tony before -- in addition
19 to what he is going to say. Tony, what do you think when you
20 hear statements like Jay's about, well, we could live with a
21 formal process if we were guaranteed that we would have a

1 Judge Bollwerk? I mean, why can't we have more -- you made a
2 comment yesterday about let's bring back the advisory
3 committee on selection of judges. I mean, why can't we have
4 more Judge Bollwerks?

5 ROISMAN: Well, I've never had the pleasure of being in a
6 case in which Judge Bollwerk was involved, so I'm going to
7 make it non-personal, but my reaction to Jay's comment was
8 that this is outcome determinative and it has nothing to do
9 with anything substantive, and it only underscores the point,
10 the first point that I wanted to make, which is there is
11 absolutely not a shred of scientifically reliable, admissible
12 evidence that the Commission needs to do anything to change
13 its current hearing process in the direction that these
14 distinguished lawyers have recommended.

15 Each of them has a little anecdote to tell and when you
16 get to the root of their anecdote, it turns out some hearing
17 board chairman didn't do it the way they wished they would,
18 and I think Jay just put his finger on acknowledging that that
19 was really the case.

20 Now, the hearing board chairmen have all the authority
21 they need to control adjudicatory hearings. If they didn't

1 have it in specific rules, they have it in 2.718. They can do
2 pretty much whatever they want and there's very little limits
3 on their power and when they choose to use it, they use it
4 effectively, and when they choose not to use it, that's also
5 effective.

6 Now, the party who gets gored by that particular decision
7 always says, oh, we need to change the rules or we need
8 another judge or the case manager -- you heard Bob talking
9 about he didn't like some judges that showed up at Seabrook,
10 and now we hear the people talking about the judges that they
11 don't think are managing the mill tailing hearings properly,
12 et cetera, et cetera.

13 I just think it just underscores that. We're talking
14 here about generic rulemaking and the Commission has a duty,
15 and I'm sure it will see to it that that duty is carried out,
16 to make sure that it doesn't begin to tinker with the system
17 until it has some hard evidence that, A, there's a problem
18 and, B, that it knows what the solutions to the problem are.

19 In that vein, I think it's important that two things be
20 done in order to make that record. One, don't just review the
21 cases that the industry tells you are the problem cases or,

1 for that matter, that the intervenors tell you are the problem
2 cases. Maybe more useful is to review the cases that
3 everybody thinks worked.

4 You heard George Edgar say the ECCS hearing was a good
5 example of a rulemaking that worked. I agree with you. It
6 was an adjudicatory rulemaking. It had cross examination of
7 scientific experts associated with it. It went on for a
8 while. It came to some important, interesting conclusions
9 that still remain the law in the agency today, and it involved
10 a huge amount of disclosure of internal documents of the
11 agency as part of that process.

12 And a lot of the cross examination was done by scientists
13 of scientists, a process which the Commission's rules have
14 long allowed, but is not used nearly as much as it could be,
15 partly because often, at least on the intervenor side, there
16 isn't a scientist available to them because of resource
17 limitations to do that type of examination.

18 But regardless of the ECCS or any other, I think we
19 should look at the hearings that worked, as well as the ones
20 that didn't work and I think there should be a pretty broad
21 definition. What does worked mean? And really study this

1 question.

2 I remember at one time the licensing -- I think Atomic
3 Safety and Licensing Appeal Board addressed the question of
4 whether or not intervenors were of any use in the hearing
5 process in a case in Louisiana in the early '70s, as I
6 remember, and they wrote a rather ringing endorsement of and
7 gave some specific examples of why they thought the
8 intervenors were useful in the process and provided a useful
9 input.

10 That kind of historical review to find out when have the
11 boards ever commented upon this, because no one will know
12 better. In many ways, there's only one expert at this table --
13 that's Paul -- on these questions, because he sits there as
14 the hearing examiner listening to these different points of
15 view and seeing the case evolve in front of him.

16 So he has a better sense of whether or not he's working
17 on a broken machine or whether he's driving a perfectly good
18 machine that sometimes runs into potholes like you do when you
19 drive on a rough road.

20 So the first point is broaden the scope of what kind of
21 cases you look at. Secondly, do it just like the engineers do

1 it when they look at nuclear events; look for root causes.
2 Don't look for the -- you know, it isn't automatically a
3 problem when there was cross examination in the case and the
4 case took four years and you could imagine that it should have
5 taken only one year.

6 Why did cross examination take that long? What was the
7 root cause of that? Was it because, as some people have said,
8 that the examination was repetitive and endless and went on
9 and on, and then was that because the hearing examiner wasn't
10 paying attention and he let it go on and on repetitively, or
11 was something else going on? Really find root causes. You've
12 got the records, it's not hard to do that.

13 The second thing about this question of the adjudicatory
14 process. I want to be very, very clear that I believe that
15 the premise is not only insupportable, but, with all due
16 respect, anti-democratic to suggest that somehow or another
17 scientists can't be questioned in cross examination usefully.

18 First of all, we have an entire court system dictated by
19 the Constitution of the United States and every state in the
20 union that says that they can be. We have the Supreme Court
21 having just recently articulated, in the cases of *Dalbert*,

1 Cumho, and the Joyner cases, the idea that scientific
2 testimony in the Federal court system is an important
3 component of reaching decisions and subject to all kinds of
4 examinations and tests and so forth, and cross examination is
5 a piece of that.

6 There is nothing about the scientific question that
7 doesn't lend itself to cross examination. Is it bad when it's
8 bad cross? Sure. Is it better when it's good cross? You
9 bet.

10 You run a system in which you make sure one party has an
11 inadequate amount of resources and they are not likely to get
12 you the best examination and they're not likely to get the
13 best advice from technical people.

14 I can tell you personally, in the Indian Point operating
15 license hearing in 1970, I spent a morning cross examining one
16 witness on the question of whether or not the droplet size of
17 the bisulfate, I think is the substance, spray that was to be
18 used in the event of an accident to control iodine releases in
19 a pressurized water reactor containment, whether the droplet
20 size would be the size that it was assumed it was going to be.

21 The size made a difference as to how much iodine it

1 absorbed. And at the end of the cross examination, the
2 witness, who was a staff person, came off the witness stand
3 and said to me, "That is absolutely the best cross examination
4 I have ever experienced." Since, of course, you were not
5 talking about the relevant point. The relevant point isn't
6 the droplet size. The relevant point is the effectiveness of
7 the filters.

8 Who knew? I could understand the droplet size. I didn't
9 understand the effectiveness of the filters issue at all. So
10 I spent the morning doing that, \$1,000 worth of expert
11 consulting would have solved that problem and I would have
12 spent much less time doing more useful cross examination.

13 So the fact that it was good, and I appreciate Jay's
14 compliment, didn't make it useful and it wasn't useful for the
15 hearing or anything else.

16 But I believe cross examination inherently is a way of
17 getting at truth and is a valuable -- is a valuable tool.

18 The Commission shouldn't -- I don't mean that they
19 shouldn't abandon it casually. They shouldn't abandon it.
20 They should maintain it and it should be a part of the process
21 and licensing hearings should be absolutely continued with

1 that.

2 Discovery; suggestions on reducing the time necessary for
3 discovery, I've heard those. Mal talked about some things
4 that are being done in the waste project. Jay suggested that
5 there were things that were being done in one of his cases to
6 try to deal with that. I think those are excellent
7 suggestions and I think that they speed up the process and
8 that they are beneficial; easy, extensive, ready access to
9 documents.

10 But it has to be a total data dome. It can't simply be
11 all the documents, we don't care, you see. If there are
12 conflicts among the technical people for the utility or for
13 the staff, they should be aired. Why should it -- I mean, I
14 can't think of a logical reason why a legitimate conflict that
15 existed at the staff level or at the utility or between the
16 staff and the utility shouldn't get to the hearing board if
17 that dispute seems to be important to the public, but they
18 don't know that it's important because they don't know that it
19 exists unless the underlying documents are there.

20 This process, this adjudicatory process has stood us in
21 great stead and I think it is an important test, very

1 important test of the bona fides of those who urge that it be
2 abandoned or limited in some way, that when they are
3 defendants in tort cases in court systems, they insist on
4 every one of these rights and we, as plaintiff lawyers, often
5 complain that they abuse the process, slow it down and make it
6 more expensive for us and use delay as a tool to try to keep
7 from getting a judgment.

8 Now, I complain about it, but I've never proposed and
9 would not propose that the right be removed and I do what a
10 lot of you have suggested here; I go to the hearing board or,
11 in that case, the judge, and I say I want you to put some
12 controls on this, and sometimes they agree and sometimes they
13 don't, and I end up with months of discovery which should be
14 done in weeks and depositions of witnesses that go on for days
15 and days, when they should have gone on only for hours and
16 hours.

17 But those rights, whenever you're the party who doesn't
18 want to see the outcome, those rights are very important to
19 you and it's not because they cause delay, it's because they
20 find information that helps you fight your battle and anything
21 short of that is inadequate.

1 CAMERON: Thank you, Tony. Before we go to Jill, who has
2 been waiting patiently, and I think Mal wants to play off one
3 of your comments, I want to specifically ask the people around
4 the table for -- to try to close on this.

5 Tony has made a suggestion earlier, and a number of us
6 have talked about -- a number of you have talked about it,
7 about an evaluation of the cases to find out is there a
8 problem, what is the problem, and he made a couple of
9 suggestions right here in terms of looking for root causes
10 and, of course, what do you review these cases against in
11 terms of to decide what worked or what didn't work.

12 And yesterday he suggested going to the -- one of the
13 performance objectives that the NRC has, substantive
14 soundness. I would think that maybe the work that we did on
15 the objective statement or, for shorthand, it's the "NRC
16 should" now, but maybe that statement could be used as sort of
17 the litmus test to examine this question.

18 But what I want to know from people is there is a
19 process, a methodology suggestion to try to get answers on the
20 floor, and I want to know what people think about that in
21 terms of recommendations to the NRC on whether that is

1 something that should be pursued.

2 With that, I'm going to go to Jill and then Mal.

3 ZAMEK: Do I respond to that?

4 CAMERON: No. Whatever you wanted to say. I know you've
5 been waiting.

6 ZAMEK: I would like to respond to Dave's example and he
7 perceives that case you're referring to as low risk, but I
8 want to point out that the intervenors clearly perceived it
9 otherwise and if maybe not high risk to themselves personally,
10 perhaps to the environment and the water, the ground water, et
11 cetera.

12 But because of their powerful beliefs and their really
13 powerless situation, because speaking from an intervenor's
14 point of view, we're desperate and we do whatever it takes to
15 attempt to get our point across.

16 I think that intervenor funding would really eliminate so
17 many of these problems, because if we had good counsel and we
18 had witnesses, we wouldn't have to do, like Tony was saying,
19 that extensive cross examination and the piles of paperwork
20 that we have to do in an attempt to accomplish what we want,
21 but don't have the resources to finance.

1 So I strongly believe that we should maintain the formal
2 hearings, with the discovery and with cross examination, but
3 we need the funding in order for this to be an effective
4 process.

5 CAMERON: Thanks, Jill. And let me take this opportunity
6 to point out that there is a whole suite of issues, so to
7 speak, on page two and three of this problem sheet that I want
8 to get to soon, so that we can have a good discussion of that,
9 because I think it deserves a good discussion and it raises
10 the -- you know, Jill's comments were reflective of those.

11 Let's go to Mal and then let's go over to -- we'll go to
12 Jay, Dave, George, and then we'll come back over to Jeff and
13 Paul.

14 MURPHY: Thanks, Chip. I do have a couple of quick
15 points and I did want to play off of something that Tony
16 mentioned, and that is that access, the facilitating discovery
17 and access to documents.

18 Again, I urge everybody who is not familiar with it to
19 take a look at subpart (j) in that respect. On the question
20 of whether or not it should be a complete data dump, and you
21 can argue about what data is really needed, et cetera, but on

1 that question, under subpart (j) and in the high level waste
2 licensing proceedings, we have an LSN, licensing support
3 network administrator, for example, who works in the next
4 building, works for Paul, who is essentially in charge of
5 making sure that everybody who wants to participate in the
6 licensing proceeding complies with the requirements for
7 document discovery and for loading up their web site and
8 making sure it's accessible to the public on an easy basis, et
9 cetera.

10 There will be disputes over whether or not the Department
11 of Energy or the NRC staff, for example, has placed all of its
12 relevant or could lead to admissible evidence kind of
13 documents in the LSN and under the rule, the presiding officer
14 will decide those challenges. So that kind of mechanism, that
15 vehicle is in place in subpart (j) for the high level waste
16 proceeding.

17 And I have felt for years that assuming our system works
18 the way we intended it to work when we originally negotiated a
19 precursor to the current system, that it will eventually be
20 used in all NRC licensing proceedings or all complex,
21 complicated, significant ones.

1 Obviously, you're not going to make every dentist put his
2 records in an LSN when he wants to reload his X-ray machine or
3 whatever the hell they do to get their -- but for serious
4 licensing cases, I think ultimately something like this will
5 ultimately be, will eventually be used, and I'd certainly urge
6 the Commission and everybody here at the table to look at that
7 and for the Commission to take a look at that to see if some
8 of the problems that some people have raised in the last day
9 couldn't be addressed by the use of something similar to
10 subpart (j) in reactor licensing or license renewals or the
11 uranium side of it, which I'm totally unfamiliar with, et
12 cetera.

13 One other point that I want to associate myself with,
14 partly at least, with some of Tony's remarks. It's not only
15 important to an opponent in a licensing process. It's not
16 only important to someone who wants to get to know that all of
17 this whole panoply of protections, if you will, cross
18 examination, complete document discovery, motions practice, et
19 cetera, are available. I'm suggesting strongly that for a
20 neutral party, such as Nye County, that is also very important
21 because we have been telling and the NRC staff has been

1 telling and the Department of Energy has been telling the
2 public in the State of Nevada, and I speak only on behalf of
3 the folks who live in Nye County and whose government is
4 officially neutral, for years, that Yucca Mountain will not
5 become a repository unless and until the NRC grants it a
6 license or a construction authorization or however you want to
7 phrase it, after a full trial type exposition of all of the
8 technical and scientific issues.

9 So that the people in my area, whether opposed to the
10 repository or in support of the repository, view the
11 Department of Energy as on a mission to characterize the site
12 and if it's adequate, to then build a repository there.

13 But they have been -- the message they have received from
14 all parties, including us and the DOE and the NRC and
15 everybody else is that the mission of the NRC in the high
16 level waste process is to arrive at the correct decision,
17 after a full, fair, and complete, transparent exposition of
18 all of the technical issues.

19 So from my point of view, it's not only important to the
20 utility industry that DOE be able to succeed in the high level
21 waste repository, so they have someplace to place their excess

1 material. I don't even like the word waste. And it's not
2 only important to DOE that it be able to state its case. I
3 think it's -- and the State of Nevada to be able to fully
4 oppose the repository. It's important to a neutral party that
5 not only do we -- and we'll have some issues -- not only are
6 we able to litigate our issues, but that our public is
7 satisfied that the correct decision has been made or at least
8 there has been a legitimate, serious, good faith, good-hearted
9 attempt to arrive at a correct decision after all of the
10 issues have been fully litigated.

11 CAMERON: So just to put a finer point on that and maybe
12 you already did, it's pretty clear that in terms of the issue
13 of the -- since we had a comment on that -- the issue of
14 making the high level waste licensing proceeding informal,
15 whatever that means, what would your views be on that?

16 MURPHY: In this context, I hate that word informal, but
17 I don't think -- we'd have to see. I mean, the devil is in
18 the details, obviously. I don't personally have any objection
19 to making some changes to the licensing process. Obviously,
20 everything can be improved or at least subject to examination
21 in that regard.

1 But I think whatever is done, and I read, incidentally,
2 the SRM not to foreclose at least the high level waste process
3 licensing and reactor licensing or whatever, I read the SRM as
4 indicating that the Commission wants flexibility in order to
5 somewhat relax or make less rigid some of their licensing
6 hearings, but not necessarily to apply that to every case
7 before it.

8 But certainly I think some improvements can be made, but
9 the basic -- the historical, fundamental attributes of a full
10 adjudicative process in which all parties get a chance to air
11 in a meaningful way their concerns and to present their
12 evidence and to test the views and the evidence of the other
13 parties should be retained; that is, discovery and I think
14 we've got a pretty good handle on that with the licensing
15 support network. The right to present evidence orally and in
16 writing and certainly written expert direct testimony is the
17 way to go.

18 I mean, it would be silly to do it in any other way, I
19 would think, and the right to cross examine witnesses, make
20 motions, present arguments, et cetera.
21 As long as those basic attributes of a fundamental

1 adjudicatory process are retained, how you massage the margins
2 to make the system more efficient, I think, is not that
3 important and I don't think it's all that important to the
4 public.

5 And with respect to cross examination, let me just close
6 with this one thought. I've never met a scientist, and I've
7 worked with lots of them and I've cross examined lots of them
8 and we've got lots of them working for us now and they all
9 just have nightmares about being cross examined by lawyers in
10 proceedings, even though some of them make a pretty decent
11 living doing it.

12 But cross examination has, from the days of Galileo, been
13 a fundamental attribute of the scientific method. Every one
14 of these people, I mean, that's what scientific peer review
15 is, for crying out loud. They get together in a room and
16 sometimes they can be as mean and nasty and insulting to each
17 other, you wouldn't believe it.

18 I've sat in on scientific peer reviews, sort of in the
19 back row, and I think, good God almighty, I thought lawyers
20 were bad to each other, these people are just outrageous.

21 CAMERON: That's a positive statement.

1 MURPHY: Every scientific article that's published in the
2 peer review journal has, in effect, been subject to cross
3 examination. Every scientist in the country, at least who has
4 a Ph.D. or a master's degree from some legitimate educational
5 institution, has been cross examined by a bunch of smart
6 professors.

7 My father-in-law ran the air pollution control Ph.D.
8 program at Oregon State University and that was one of the
9 more fun things he did in his life, was make life really
10 miserable for his Ph.D. students when they had to defend their
11 thesis. Well, what is that? It's cross examination, because
12 that's the way the scientists have for years, for centuries,
13 determined as a way to test the validity of the theories and
14 analyses that they're advancing.

15 Why in the world that shouldn't apply in something like a
16 reactor licensing case or repository licensing case or any
17 other complex case involving these kind of scientific or
18 technical issues is beyond me. And why these people get
19 nervous about it, I don't understand.

20 But clearly, I mean, by allowing cross examination in the
21 licensing process, it seems to me all we're doing is extending

1 the scientific method, in any case.

2 CAMERON: Thanks, Mal. What I'd like to do now is go to
3 finish off the cards that are up, so that we can move on to
4 these other important issues, and go around this way, starting
5 with Jay, and if you could, I would like to hear opinions
6 about the suggestion about the systematic evaluation of cases
7 to find out what exactly the problems are here as opposed to
8 what has been referred to as an anecdotal approach.

9 Jay, go ahead.

10 SILBERG: First, I like Mal's formulation of full, fair,
11 complete, transparent analysis to arrive at the correct
12 decision. I guess the problem I have is that we're adopting
13 one particular paradigm to do that and I think I do disagree
14 with you that adjudicatory, legal cross examination is the
15 only or the best way to do it.

16 The fact that you have scientific peer review, we, in
17 fact, do design technical projects using the scientific
18 method. We built the space shuttle with scientific peer
19 review and not with lawyers cross examining the witnesses.

20 We developed the internet not with lawyers cross
21 examining scientific witnesses, but with scientific peer

1 review. It seems to me that a system that is more shaped by
2 the scientists debating rather than the lawyers debating is
3 probably one which is more likely to arrive at the truth, and
4 I think that is the system that by and large exists today
5 outside of the hearing process.

6 I would hope that the more of that we would get to, the
7 better we would be. I don't think that the legal cross
8 examination is necessarily identical to or even as good as the
9 scientific system that you described.

10 In terms of whether we need an objective third-party
11 approach instead of anecdotal, I think what you're going to
12 come back with is anecdotal anyway, because what we're doing
13 is looking at a series of case studies or a series of
14 anecdotes and I think that the folks that will be looking at
15 this process certainly within the Commission have been through
16 these hearings and they have collected, if you will, the
17 anecdotes from all the hearings, the good ones and the bad
18 ones, the ones that worked and the ones that didn't work.

19 And I don't have a problem if Joe and Larry and their
20 minions put together that in a more formal way. I think to go
21 outside and to charter an academic body or the National

1 Association of -- National Academy of Public Administration or
2 somebody like that to do it, will put this whole process into
3 dead storage for an extended period of time and I think we
4 will miss the opportunity that we talked about early on to
5 look at this issue during a window, and we may actually have
6 some time before we get deluged with another round of
7 hearings.

8 If we can cure the problems, whatever they may be and
9 however they're described, when there aren't a lot of hearings
10 out on the table, I think we're better off than putting this
11 off into a -- for several years while someone goes off and
12 does a wonderful academic study.

13 One thing I would like to get into, because I'm going to have
14 to leave in a little while, is the intervenor funding issue.

15 CAMERON: And I specifically want you to be here for that
16 and I would like to do it all at one time. Can you just hold
17 that for a couple of minutes and let's see if we can get
18 through this and then we can --

19 MURPHY: Let me just respond to a couple of things Jay
20 said, because he was responding to me. The big --

21 CAMERON: And is he going to have to respond?

1 MURPHY: No. This is going to be real short. No
2 surrebuttal. I get to manage this case.

3 CAMERON: Okay. Go ahead, Mal.

4 MURPHY: The big difference, the essential difference
5 between scientific peer review and what I refer to with cross
6 examination, of course, is that one of them is done behind
7 closed doors and the other is done in the open, and available
8 at least to be reported in the press.

9 Secondly, you mentioned being -- you don't think lawyers
10 questioning scientists adds that much to the process. Would
11 it make you feel more comfortable if your hydrologist was
12 questioned by my hydrologist rather than by the lawyer?
13 Because that's possible.

14 I can guarantee you, Jay, you've worked with enough of
15 them yourself, if you want to unduly prolong this or any other
16 licensing proceeding, you have the scientists question the
17 other scientists on the witness stand. It will never end.

18 The questioning will be interminable.

19 SILBERG: That's what we do in the review process before
20 you get to hearing.

21 MURPHY: Well, you still have to do some of it in the

1 light of day. And even under the NRC rules, there's nothing
2 that says -- we don't have a complete monopoly on this
3 process, as we lawyers have been able to maintain in others.
4 There is nothing in the NRC rules that would prohibit --

5 CHANDLER: It's explicitly provided.

6 MURPHY: Right, exactly. It's explicitly provided. But
7 if you want to see this thing go 15 years, you have the
8 scientists question each other during this process. It will
9 never end.

10 CAMERON: Thanks. Let's go to Dave or Katie, who wants
11 to talk?

12 LASHWAY: Just quickly. I think the logical approach
13 outlined by Tony and modified by Jay we would agree to.

14 But let me add, Tony, that we are not in any way arguing
15 against the outcomes, the results from the presiding officers
16 in these various cases that we mentioned.

17 However, the actual practice and the management of the
18 cases during the course of proceedings has resulted in not
19 only great expense to the licensee, which could be -- which
20 was foreseen. So that's not the negative, in and of itself,
21 and the protracted litigation wasn't the negative, in and of

1 itself.

2 However, the legitimacy of the process was called into
3 question and that's difficult for the licensee. At the end of
4 the process, when the license is upheld or should the license
5 be upheld, if the process, if the legitimacy of the process is
6 questioned -- i.e., for example, in the HRI proceeding, the
7 judge was continually called biased in the press. Bias
8 assertions were made to the Commission, as well as the DC
9 Circuit.

10 Where does that leave the licensee? The licensee has
11 gone through this long process at great expense, but isn't
12 really sure or secure in the license, even though it's been
13 upheld, because the legitimacy of the process has been called
14 into question.

15 It's not a good position for NRC to be in, it's not a
16 good position for the licensee to be in, and the intervenors
17 who feel that they have not been given adequate or due process
18 can simply raise this legitimacy of the process.

19 So all we're trying to point out is we're not complaining
20 about certain judges, we're not saying this judge is better
21 than this judge, but what we are saying is that when managing

1 the process of the hearing, standardized tools, even in the
2 informal process, should be used universally to ensure that
3 when the process is complete, the process can be deemed
4 legitimate and so that there is faith in the institution and
5 that the licensee can rely upon the validity of the license to
6 go forward with the project without concerns about bias or
7 legitimacy of the process.

8 CAMERON: Thank you, Dave, and thanks for responding to
9 the suggestion to do the review of the cases.

10 We're going to go to Paul, and then Jeff, and then I
11 would like to kick off the suite of intervenor issues by going
12 to Jay. Then that will give us hopefully about a half hour to
13 discuss all of that before we finish. Paul?

14 BOLLWERK: I just want to say two things quickly. First,
15 in terms of case management, that's obviously a problem that I
16 have to deal with. I've only been in this job as a permanent
17 chief judge for three months, but it's something we're
18 beginning to address and the Commission has made it clear that
19 they expect the cases to be well managed, and so do I.

20 So that's something we're going to move forward on,
21 obviously, on a regular basis. We already are talking about

1 that quite a bit.

2 And it's an important thing. As I mentioned, I do teach
3 a course at the Judicial College where I talk about case
4 management and complex cases. So I understand fully the
5 concerns there and we need to deal with that.

6 The other thing I just wanted to mention briefly is the
7 informal process and the way it was put together, and since I
8 drafted that rule back ten years ago, I kind of know why it
9 was done the way it was. Some people like Marty Mulls can
10 probably speak to it as well who were involved with it.

11 But when that was -- the idea there -- and I should also
12 mention that was an experiment. It was done ten years ago and
13 it probably is time to re-look at it. I would be the first
14 one to admit that.

15 But the idea there was really to make two fundamental
16 distinctions between the formal process. One was to lower the
17 threshold, in many instances, the threshold for contentions.
18 There really is no threshold, other than if you have something
19 that relates to the proceeding.

20 Maybe that was going too far in terms of calling it
21 informal, but that was the idea. Allow the -- in theory, the

1 way the Commission had laid this out, these proceedings were
2 supposed to be less complicated, arguably, than what was going
3 on on the reactor area. They may not have turned out to be
4 that way and that's one of the things that needs to be looked
5 at.

6 The other idea was put into the rule and besides sort of
7 lowering the ability of folks to get in and participate in
8 terms of at least the issues that they brought forward, was
9 the idea that the presiding officer was given more
10 responsibility for developing the record.

11 There are two sides to that. One is the presiding
12 officer, obviously, to some degree, we do that now. We can
13 question witnesses even in the formal proceeding. But I think
14 there's some uncertainty among the board and the presiding
15 officers about how far they should go in that, even now, and
16 it's something we're particularly comfortable with. It's
17 something that we need to continue to look at.

18 But if that's really what is wanted, then that's
19 something we're going to have to maybe take more of a role in,
20 depending on how the rule is written.

21 But right now, the parties, on a formal proceeding,

1 there's the general back and forth of the adversary process.
2 That informal rule was written to highlight something
3 different and maybe that hasn't quite come out the way it
4 should have.

5 Maybe that isn't something that should be in the rule.
6 That's something that maybe needs to be looked at in terms of
7 the whole informal process. So those were two things that I
8 would think we would kind of look at.

9 And someone talked about subpart (m). Subpart (m) does
10 have some of the informality, but, of course, one of the
11 things it does is raises the contention standard back up
12 again. Is that how you want the whole process to be played
13 through? I leave that obviously to you all to talk about.

14 One other thing and we've sort of thrown this idea out on
15 the table, as part of the process at the Commission in terms
16 of the SECY paper is should there be a process whereby the
17 folks, whether it's the intervenors or the licensee, depending
18 on who is involved, they sort of choose the procedure they
19 want. If an intervenor doesn't have the money, can't do a
20 number of things, well, but they want to get their issues in,
21 want to get them heard by a neutral presiding officer, maybe

1 use an informal process with a lower threshold for
2 contentions.

3 They can come in and what they don't then have are all
4 the panoply of things that go with the formal process, which
5 includes discovery and cross examination, but nonetheless they
6 don't have the high threshold for contentions. That was an
7 idea that we had put on the table.

8 Now, that has -- the devil is always in the details and
9 there's obviously -- that could affect different things
10 different ways in terms of who participates, but that may be
11 something you want to think about, again, as well.

12 Again, if folks really want to get into the process, but
13 they can't participate in terms of having experts, but they
14 want to have their issues heard, that may be one way to deal
15 with it.

16 But there is a fundamental question, I think, about the
17 complexity of the cases and at least with the way the informal
18 process now works as to whether, for the really complex cases,
19 whether, putting aside the distinction between reactors and
20 materials, whether that is, I think, an appropriate dividing
21 line.

1 One of the things we found, interestingly enough, in the
2 reactor operating license cases, which are informal, and you
3 would think, given their exam, they'd be the most -- when we
4 get into simulators, where you've got a number of people on a
5 floor saying who did what when, then we get into all kinds of
6 problems and you cannot cross examine an affidavit. You just
7 can't do it. All you get is more affidavits in and then
8 you're -- especially if you're getting into credibility
9 questions, who is telling the truth on these affidavits.

10 So, again, I would throw that on the floor as something
11 to think about, as well.

12 CAMERON: Okay. Thanks, Paul. I think that you raised
13 an issue that we're going to get into in about two minutes,
14 which is the threshold on contentions.

15 Let's finish this off with Jeff, so that we can get into
16 these other issues, and we'll see if we have time to go back
17 to Dave later.

18 LASHWAY: I just wanted to quickly add just one point.
19 With respect to the questions from the presiding officer, in
20 the subpart (1) context, we have found that incredibly useful.
21 Judge Bloch was very effective and efficient at using

1 questions to the various parties to get to the heart of the
2 various issues when they were complex issues; our medicine man
3 versus their medicine man, their hydrologist versus our
4 hydrologist.

5 And the going back and forth on the papers was very
6 difficult.

7 CAMERON: Thank you, Dave. Jeff?

8 LUBBERS: Just a few observations. I think it's very
9 important to encourage the judges, the presiding judges to
10 have fairly stiff backbone on these kinds of issues, whether
11 to admit evidence, whether to be sort of tough-minded on
12 limiting -- trying to put some limits on cross examination,
13 because it's always -- a judge will never be reversed for
14 letting in evidence, for the weight of the evidence. So
15 they're always going to have a tendency to sort of err on the
16 side of letting things in.

17 And if judges are not subject to performance appraisals
18 and performance evaluations, then you have to rely on the
19 chief to sort of keep some good standards there.

20 And for example, I've seen some administrative
21 proceedings with multi-parties where each lawyer representing

1 the varies parties or, in this case, intervenors, I guess, is
2 permitted to do his or her own cross examination of the
3 witness, and you get a lot of redundancy and repetition.

4 So, again, that's something that I think the Commission
5 would have to pay attention to, try to make sure the lead
6 attorneys are designated, if you have similar issues. And
7 here is a situation where intervenor funding might be helpful,
8 because if you fund intervenors, one of the conditions might
9 be that you try to organize yourselves in terms of lead
10 attorneys for cross examination purposes. That's point one.

11 Point two, with respect to the study that we've talked
12 about, again, it's too bad the administrative conference isn't
13 around to do this study, it sounds like a perfect study for
14 the old administrative conference to do.

15 But we used to try to do some statistical studies on
16 agency cases and so I would hope that you have the resources
17 to go back into the files in selected or maybe all the cases
18 under subpart (g) and subpart (l) and various subparts, and
19 try to do an analysis of an elapsed time study; where are the
20 elapsed times in the pre-hearing, the hearing and the post-
21 hearing stages.

1 We came up with about 21 steps in a -- as a generic
2 timeline for administrative cases, seven in each of those
3 stages, and it can be very illuminating. You also have to
4 take into account sort of tolling of the case, for some
5 reason. You can't really count that the same way.

6 So I would hope that you can just assign somebody to do
7 such a study here at the NRC.

8 Third, we haven't talked at all about ADR and I would
9 hope that there is some way that some forms of alternative
10 dispute resolution, mediation techniques could be used to try
11 to settle issues or narrow the issues before the case gets to
12 hearing.

13 Fourth, we haven't talked much about the review by the
14 Commission; does the Commission review every case, is there
15 some sort of certiorari review procedure where the Commission
16 decides whether to take a case. The old Civil Aeronautics
17 Board had a rule that two out of five members had to want to
18 review the case before they would even take it up. So that if
19 only one member wanted to review the case, that wouldn't be
20 enough and the initial decision would be affirmed.

21 That may be an area where you could eliminate some delay

1 at the review stage.

2 Last is sort of an unrelated point. We've talked some
3 about scientific issues. I know that there are some issues
4 that have scientific review boards, scientific advisory
5 committees. EPA has one.

6 When you're dealing with an issue like renewals, you know
7 that there are going to be some issues coming down the pike
8 about deterioration of plants, some metal in the power plant,
9 at what rate does it deteriorate.

10 You can sort of project issues down the road that you may
11 be encountering as a prelude to generic rulemaking. I think
12 it might be useful for the NRC to consider the EPA model of
13 having a scientific advisory board to throw some of these
14 futuristic type questions for resolution before it gets caught
15 up in the individual case proceedings.

16 CAMERON: Thanks a lot, Jeff. We appreciate your outside
17 perspective, on this.

18 LUBBERS: Naive perspective.

19 CAMERON: I didn't say that. But thank you and also for
20 -- we do want to get to the suite of issues and a lot of them
21 thread to this intervenor funding issue and I think we have to

1 pay attention to that major set of issues before we adjourn
2 here today.

3 And let's start off with Jay and then go to Susan. Jay?
4 And we can -- I mean, fold whatever you want from that suite
5 of issues into your statement.

6 SILBERG: I don't want to take up all the time and I
7 think I could do that. Intervenor funding, I think, is a
8 basic issue that I thought was resolved a couple decades ago.
9 There are several models that one can adopt.

10 One is a model in which an independent agency is created
11 to make decisions, to review issues, grant or deny licenses,
12 set standards, and that those decisions, those actions by the
13 independent agency are subject to challenge.

14 There is another model, the common law model, people want
15 to do something and someone doesn't want it, you go to court.
16 There is no independent agency other than the court and the
17 court will decide.

18 Where the government has created a knowledgeable
19 independent agency to make those determinations, the idea of
20 establishing intervenor funding to create yet another level of
21 independent review seems to cut the heart out from the purpose

1 of having an independent agency in the first place.

2 We do have checks and balances. Do we need an
3 independent agency to check the independent agency? Do we
4 then need another independent agency to check the independent
5 agency that's checking the independent agency? And then do we
6 need to have fully funded intervenors who can check the
7 independent agency that's checking the independent agency
8 that's checking the independent agency?

9 At some point, we have to go with a system that we are
10 creating a body that is chartered to make the decision. If
11 people are unhappy with those decisions, they have a right to
12 challenge them. But does the government have an obligation,
13 in essence, to create a shadow agency, so that anyone who
14 wishes to challenge that determination, in essence, will
15 create a new mini agency, again, independent, to go through
16 the whole process again, because they didn't like the initial
17 result.

18 It seems to me if you're going to go that route, we don't
19 need the NRC. We ought to let the applicants do whatever they
20 want and then if intervenors want to come in and maybe we
21 fully fund them as the check on the applicant.

1 But having set up one check and one balance, I don't know
2 where you stop. The idea that intervenors should be, quote,
3 fully funded, whatever that means, and that, in essence, the
4 applicants will have to pay not only for the NRC review, but
5 also for the intervenor's review, and then what if someone
6 wants to come in and support the application, the applicants
7 have to fund that review as well.

8 I simply don't know where you cut off the process and
9 philosophically, if we are to have agencies that are chartered
10 by the government to make these determinations, the idea that
11 there ought to be a fully funded shadow agency to second guess
12 those determinations, I think, is just going the wrong way and
13 is not what -- certainly what Congress had in mind in creating
14 the whole idea of independent agencies, those going back 100
15 years, or specifically in this case.

16 I just think it would be a bad thing philosophically, a
17 bad thing governmentally. If people want to devote their own
18 resources, that's fine, but I don't think that the government
19 should need to support that. I think it would raise very
20 difficult questions of who gets the funding and how much
21 funding they get and what happens if six intervenors show up

1 in a hearing, as often is the case, do they all get funded; do
2 we allocate one pile of money and who is going to divide it
3 amongst them and how much should that money be, how many
4 witnesses do they get to hire, and which witnesses.

5 I think you go down a slippery slope and it becomes even
6 more than an unmanageable process.

7 CAMERON: Thanks, Jay. Let's go to Susan and then we'll
8 got to Bob Backus.

9 HIATT: First, I want to touch on a point that Jeff
10 raised about elapsed time studies. These are very complex
11 proceedings and just because a case, such as Perry, that I was
12 involved in, lasted five years, doesn't mean that there were
13 five years of continuous hearings.

14 Much of that time delay was attributable to delays in
15 staff review, actual delays by the applicant, delays in
16 construction. The plant just wasn't ready to operate during
17 much of that time. The schedule kept slipping and the costs
18 kept increasing. I mean, it's not something that you can
19 really blame on intervenors and say that hearing went on for
20 five years, so there was a problem there.

21 I mean, there are things going on outside of the hearing

1 process that often contribute to the apparent delay and the
2 intervenors had nothing to do with it.

3 LUBBERS: A quick question. Is that apparent from the
4 files? If someone went back to the file, they could see that?
5 Because I was certainly not suggesting that those factors be
6 ignored.

7 CAMERON: I think that's the important point.

8 LUBBERS: It's doable, but it would be very difficult.

9 HIATT: I'm not sure you could go back to like a
10 transcript or a hearing file and fully pull that kind of
11 information out. You'd have to look at the staff review and
12 the SER dates and everything else. But it does add some
13 complexity to that.

14 With regard to Jay's comments, first, some of the
15 logistical questions that you raised, well, how do you decide
16 who gets the funding and how much. Those are things that
17 agencies and entities that gave grants, that issued contracts,
18 those are things that you have to consider.

19 If you put out an RFP and you get a number of proposals,
20 you have to make a choice of who gets that contract. Some
21 people will get it and some people won't and you have to

1 develop rules and a process and some people won't be happy,
2 but it's doable. It's done on a day to day basis by varies
3 foundations, agencies that do things like grants and issue
4 contracts.

5 I think that there are things that maybe, besides
6 outright funding, that the NRC could do to make a more
7 balanced record. It's not that intervenors are coming here
8 with our hand out looking for a welfare program. I mean, we
9 want the resources to do the good job. We want a balanced
10 record. We don't want to think we're wasting our time and
11 ending up with a record that just we're bound to lose because
12 it's one-sided.

13 And one of the things that can be done, there is
14 precedent in the agency, I believe it's a Midwin case, I think
15 it's ALAB-382. The idea of calling a board witness, the board
16 would actually appoint a witness and the expenses for that
17 would be paid out of the agency, and that's one of the things
18 I tried in the Perry cases, get the board to appoint a
19 witness, because we couldn't afford it and we felt the record
20 would be deficient without it.

21 But I think there are some things that can be done to try

1 to alleviate some of the burdens on intervenors from a cost
2 basis that wouldn't necessarily involve writing a huge check.

3 CAMERON: Thanks, Susan. You're indicating that there is
4 a spectrum of things that might be done to alleviate some
5 problems that you've seen, problems that Tony or Joe might
6 have brought up.

7 Do you have any comment on Jay's shadow government issue,
8 that he connected to funding of intervenors?

9 HIATT: I'd just say that something we did in Ohio, our
10 enabling legislation for the low level waste facility has
11 partial intervenor funding in it and we never got to
12 experiment with this because the process was canceled, more or
13 less.

14 In raising in -- in that legislative process, I don't
15 remember anybody raising that kind of issue about it's a
16 shadow government. I think people recognized the lack of a
17 level playing field, that this would be a very controversial,
18 difficult to cite, difficult to build facility, and there
19 would be opposition and the question I think that kept arising
20 is what kind of opposition are you going to get.

21 Are you going to get people rioting in the streets and

1 that sort of thing? Are you going to get people working
2 within the system and serving what I feel is an essential QA
3 function? And I don't remember anybody arguing, well, it's a
4 shadow government. It's something we -- it's on the books in
5 Ohio. I don't know if -- I doubt it if will ever be
6 implemented. But it's something we wanted to try there and I
7 don't remember anybody raising those types of arguments
8 against it.

9 CAMERON: Thank you. That's useful to know that there
10 may be examples out there that can be looked at. Bob?

11 BACKUS: On the issue of shadow government, I think the
12 whole premise of this country is the government is shadowed by
13 the citizens, who keep a watch on it and check on its
14 operations to a greater extent than any other country. In New
15 Hampshire, we even guarantee the right of revolution by
16 constitution.

17 I wanted to talk about the ADR thing that Jeff mentioned,
18 because I'm a big believer in ADR. I'm a mediator. I do a
19 lot of mediations for our courts in New Hampshire, do them
20 privately, and I really believe in the ADR process and
21 particularly mediation.

1 I think the experience we had in the reactor licensing
2 was, even with that belief I had, it was probably not going to
3 be very fruitful, because it's really a total divide. The
4 applicant got the staff on board and they want their license
5 issued to build the nuclear plant here. The opposition says
6 no way, no how, and it's really not an easy issue to resolve.
7 You can't split the difference on that.

8 Reactor license extensions, that might be possible.
9 Maybe you could do a mediation and say, okay, you give them an
10 extra five years, but we don't want the thing to run for 20
11 years. I don't even know whether the jurisdiction or the
12 authority is there for that.

13 But the place where I think we might try ADR is I think
14 where we are right now, and that is doing some negotiations
15 that could result in changes to the hearing process and the
16 regulations for those hearing process, and I think I'm the one
17 that yesterday talked about a grand bargain.

18 I think these folks in the industry have some things that
19 they want. I don't think it's impossible that there could be
20 some negotiations, some give and take, to have a negotiated
21 rulemaking, which Jim Riccio would have my head because he

1 says never do a negotiated rulemaking, but I'm willing to
2 contemplate it.

3 Obviously, some of the things we want are some of the
4 things on the list. We'd like to see the contentions
5 requirements reduced so we don't have to, in our view, prove
6 your case before you get in. We'd like to see standing not
7 made a big contested issue that takes a lot of time.

8 The funding thing we've talked about a lot and I
9 certainly agree with Susan. It's doable, but it's damn hard
10 to do. There's a lot of devil in those details.

11 And another thing we would want is an issue that's very
12 contentious, because George has mentioned it several times,
13 the Commission's intervention in particular things.

14 I think he likes the Commission's intervention, because I
15 think it's always worked out to be favorable to his client's
16 interest. In my experience, it's not been favorable to my
17 client's interest. But one of the things we would want is
18 some discussion about standards for Commission intervention,
19 some objective standards for the Commission to intervene in
20 proceedings.

21 I could go on with the list, but if there was an interest

1 in talking about this, I think a mechanism could be set up to
2 do it and arising out of this very process you've got going
3 here, Chip.

4 CAMERON: Thanks, Bob. Mal Murphy certainly, if not --
5 he didn't explicitly recommend it, but I think that he
6 implicitly supported the use of some type of a negotiated
7 rulemaking or a discussion concept to set these types of
8 rules, and maybe there's some -- maybe there is something that
9 could be developed along those lines and we'll see if we can
10 come back to that issue.

11 Let's go to Tony and, Tony, I don't know whether you want
12 to comment on that, also, but whatever you want to say.

13 ROISMAN: I really want to go back to intervenor funding.
14 Jay is, of course, right. It is an old issue. But its age
15 doesn't make it any less relevant.

16 I think that many of -- as I look over this list of other
17 items, which at least I and Bob are not going to have time to
18 be here for, because of our flight this afternoon, but that
19 many of them are problems which, if the parties to the
20 litigation, forget about intervenor funding, if the parties to
21 the litigation were equally well financed, wouldn't present a

1 problem.

2 If you had the resources to take advantage of the
3 agency's openness with regard to all the licensing processes
4 and meetings that are going on and so forth before the license
5 gets noticed up, you wouldn't have any problem putting
6 together the contentions that are relevant and, in fact,
7 presumably, you would get to the ones that really mattered and
8 along the way you may very well have, as a result of the give
9 and take in those meetings, negotiated out or resolved or
10 become satisfied that this particular issue is being dealt
11 with.

12 So I think a lot of these things, tight time limits on
13 cross examination, one of the things is that if you have
14 intervenor funding or something like it, depositions can take
15 the place of cross examination and you simply submit -- you're
16 not trying to, except in rare cases, get the hearing board
17 chairman to hear a particular witness for a credibility reason
18 and the deposition then becomes the vehicle for putting that
19 together.

20 So I think that making the process run a lot faster and
21 expecting a lot more out of the parties who are opposed to the

1 license is an easy tradeoff for making sure that they have the
2 resources to do it, but I don't think anybody in the room can
3 fail to understand why the party, in the case of Susan, in the
4 case of Jill, who are basically doing this themselves, without
5 the benefit, for the most part, of legal assistance and
6 technical assistance, for them to lay down very stringent
7 rules that say you've got to do it fast and you've got to do
8 it with these clear contentions and so forth, is simply
9 intolerable, and that's kind of the situation.

10 So that's the first point.

11 The second point is that this is reminiscent of the old
12 story about the farmer who was asked by the preacher, "Do you
13 believe in Baptism," and he said, "Believe in it? Hell, I've
14 seen it done." And we already have intervenor funding. The
15 Commission, in its wisdom, amended its rules to provide for
16 transcripts to be given to parties for free.

17 And if you think that's not a significant amount of
18 funding, ask the Commission -- I don't know what the dollars
19 are, but I know transcripts are expensive, unless you guys are
20 breaking some copyright rules.

21 CHANDLER: That's been long changed.

1 ROISMAN: It has?

2 CHANDLER: For more than ten years.

3 ROISMAN: Changed in what way?

4 CHANDLER: That rule has been suspended.

5 ROISMAN: Oh, it has.

6 CHANDLER: A long time ago.

7 ROISMAN: All right. Well, okay.

8 CAMERON: Let's go on.

9 ROISMAN: But anyway, there was that. Comanche Peak, we
10 had -- I talked to George about this -- we had effectively
11 intervenor funding and it was a result of a negotiated
12 resolution. The utility wanted to get a decision by a certain
13 date. We said there were 100 witnesses that we needed to call
14 and put on the witness stand in order to get their testimony
15 about whether there had been intimidation of the safety
16 inspectors at the plant.

17 We and they agreed to do them all by depositions in a
18 two-month period, seven depositions at a time, provided that
19 we would then submit the depositions in lieu of testimony and
20 be ready for proposed findings of fact and conclusions of law
21 by a certain date.

1 They agreed to it, we did it, and the results were that
2 there was a rapid resolution. It turned out not to be what
3 the utility had hoped for, but that's a separate question.
4 The point was the process worked.

5 Third, about this question of review upon review upon
6 review, the whole system is review upon review upon review.
7 The only question is where does it stop. No utility would be
8 willing to take the lowest member of the staff that they deal
9 with and let him make all the decisions and they have no right
10 of appeal up to the next highest person in this chain, up to
11 the hearing board if they don't like the result, out to the
12 court if they don't like it.

13 I mean, this is -- review upon review is the way it's
14 done. There is a limit. The US Supreme Court ends it, unless
15 you go to Congress and change the law. So it's not -- it's a
16 slippery slope anywhere you stand on the slope.

17 I don't think that there is any way to have intervenor
18 funding; by the Commission's declaration, you are prohibited
19 by law from doing it. So the only way that it would ever
20 happen is if the Commission, the industry and the intervenors
21 jointly said we've got a proposal, went and sat down with the

1 key members of Congress and said we've struck a deal, but you
2 have to agree to it, and this is the deal, here is what
3 intervenors give up, here is what intervenors get, here is
4 what we want, will you approve it.

5 If they say no, there can't be a deal.

6 CAMERON: That hearkens back to perhaps using some type of a
7 process like Bob suggested to try to do that.

8 ROISMAN: Right. And I think the logistics of it, while
9 admittedly are complicated, they are not by any means
10 insolvable. The simplest thing is you set a physical dollar
11 amount per hearing. You say we've got this much money, it
12 will be available, provided that all the intervenors agree
13 that that is to be used by them jointly and they decide how to
14 divvy it up, having to prove, of course, that they used it for
15 appropriate purposes, et cetera.

16 CAMERON: And just let me put a -- just let me emphasize
17 something so that it's clear. Provision of funding is not
18 just a quid pro quo for certain improvements, other
19 improvements in the hearing process.

20 They are, as I think people pointed out, there is a
21 relationship between some of the what I call

1 dysfunctionality that occur in the funding that is well
2 prepared issue, and I didn't want people to think that what
3 you were suggesting in terms of the tradeoff, that's really --
4 there is really a link between some of these things.

5 ROISMAN: Right. Yes. I think that's right.

6 CAMERON: Thanks.

7 ROISMAN: I'm sorry that we've got to go, but --

8 CAMERON: Yes, and I --

9 ROISMAN: I fly infrequently to Manchester, New
10 Hampshire.

11 CAMERON: Right. And I would thank both of you for being
12 here and a couple people, Mal Murphy suggested, Steve Kohn
13 suggested that there should at least be another get-together
14 like this before the proposed draft proposed rule goes out.
15 That was one suggestion that was made.

16 You heard Bob Backus talk about negotiated rulemaking.
17 So there's some process suggestions here. I don't know if any
18 of you other guys -- did we have -- should we adjourn now or
19 do we have other things that we need to get out on the table
20 here? Tony and Bob are leaving. Susan?

21 HIATT: I just wanted to make a comment about the

1 dysfunctionalities. My perception is I don't think any
2 intervenor, maybe some rare exceptions, has done anything that
3 any industry wouldn't do if you were in that intervenor's
4 shoes.

5 CAMERON: Good point. Ignore my characterization of it.
6 It's just a shorthand way of trying to describe that.

7 I would just -- Jeff, did you have a quick thing?

8 LUBBERS: Just a quick thing on the intervenor funding.
9 I don't think anybody was suggesting creating another agency,
10 although there are models of having an office of public
11 counsel and public utility commissions and things like that.
12 We're not even talking about that.

13 We're just talking about increasing public participation
14 through funding and when Mr. Silberg said that this issue was
15 settled 20 years ago, it wasn't really settled 20 years ago.
16 Agencies were in the process of figuring out how to administer
17 intervenor funding at that point and all of a sudden all these
18 programs got cut off.

19 Agencies had inherent authority to use intervenor funding
20 and then Congress starting putting riders on appropriations
21 bills that blocked these programs.

1 So I don't think the issue was settled. It's just the
2 progress of these sorts of programs was just sort of cut off
3 in midstream.

4 CAMERON: Thanks for that clarification. Let's go to see
5 if George has a comment, and then I just will turn it over to
6 the NRC folks for anything that they want to say before we
7 close. George?

8 EDGAR: I just wanted to weigh in on the intervenor
9 funding issue. I think the sense of Jay's comment, as I took
10 it, was a historical comment. The same debates transpired 20
11 years ago. We've heard the same discussion. Tony and I have
12 been in the room over the years with the same pros, cons and
13 arguments.

14 For better or for worse, in my judgment, the NRC has to
15 be the arbiter here, the notion of private attorneys general,
16 not accountable in any way to the Executive or the Congress,
17 to me, is a fundamental policy choice and it's one that thus
18 far has been made in the negative.

19 There is a GAO opinion that says that the NRC does not
20 have authority to do this. I think there are many ways of
21 improving the process to reduce the resource burden, but it's

1 far from obvious to me that providing intervenor funding does
2 then result in a more effective or efficient process.

3 I don't think that you're going to see empirical evidence
4 of that. I think when you look out there at states where
5 intervenor funding has been provided and state proceedings,
6 that there is no evidence that that's resulted in a more
7 efficient process, a more effective process.

8 I wouldn't assume that merely because you provide
9 funding, that you've solved six other problems. I don't think
10 that linkage is there.

11 CAMERON: Thanks, George, for pointing out that there may
12 be things that can be done to reduce burdens, also.

13 Before I turn it back to Larry and Joe to see if they
14 have any final comments, I just wanted to thank all of you for
15 being here and for your contributions on this, and I don't
16 think I've ever worked with a more impressive group of people,
17 although sort of a daunting group to work with in some
18 respects.

19 But thank you. Larry, Joe, any final comments?

20 CHANDLER: Just speaking for myself, I wanted to thank
21 all the other participants for their contribution. I think it

1 complicates our life, the input, and it makes it easier at the
2 same time. So thank you very much.

3 GRAY: And I just wanted to say the same, but we will
4 also carry back to the Commission the substance of what was
5 discussed around the table here the last day or so.

6 CAMERON: And I guess Jill gets the award for coming the
7 farthest distance to join us. So an extra thank you for that.

8 All right. We're adjourned.

9 [Whereupon, at 12:03 p.m., the meeting was concluded.]